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US-RUSSIA RELATIONS: CONFLICTING PURSUITS AND SECURITY CHALLENGES

DR. SANJAY KUMAR PRADHAN[1]

ABSTRACT

The US-Russia bonhomie in the early 1990s couldn't last for a long, and the present relations between the countries are now marred with divergences, conflicts and security issues. The early hopes for a better relationship have been waned today, in part because Russians are now concerned with perceived American disregard for Russian interests and Washington has made its disapproval of Moscow's assertions. The US-Russia relations have resembled a 'one-way street' to proceed with caution. While America acts vigorously to enforce its global objectives in accordance with the principle that Washington has the right to use military might to defend its vital interests, is not willing to accept Russia's quest for a rightful place in the global power structure. 'Russia is back and Putin is in charge', and Putin's priority is to reverse the west's leverage over Russia. Moscow is assertively focusing for "zone of privileged influence" and its right for the aspirations of the people living around the world. Hence, Russia has intervened in South Ossetia, Crimea and Syria and strengthened its position in Central Asia, Caspian, Black Sea and Middle East regions. Likewise, NATO expansion, proposed NMD, strategic military bases and support to its own allies by the US against Russia clearly reveals that both the super powers are now back to conflict.

Taking into account all these aspects, the paper will analyze the nature and extent of conflicting pursuits, strategic engagements and security challenges between the two super powers.

Keywords: Energy, Geostrategic engagement, Conflict, Security, NATO, western sanctions.

RESURGENT RUSSIA

The end of cold war had heralded a new phase of mutual relationship between the United States and Russia. But the early hopes for a better partnership has been waned today, in part because Russians have disillusioned with perceived American disregard for their interests, while Washington has shown its intolerance to Russia's assertion where the interests clash (Goldman, 2003). Hence, Russian-American relations have resembled a one-way street to proceed with caution (Cohen, 1997). While America acts vigorously to enforce its global objectives in accordance with the principle, 'Washington has the right to use military force to defend vital interests by ensuring uninhibited access to key markets, energy supplies, strategic resources and regions', Russia today has set to redefine its place in the global structure; distinguished itself as a global superpower; and demanded a sphere of influence around its borders and the entire world (Chomsky, 2008).

According to Vladimir Putin "Russia must aspire to claim world leadership in the realm of energy" (McAllister, 2006, p. 23). Buoyed by abundant energy, Kremlin is once again flexing its muscles abroad, and is assertive in global geopolitics. For Kremlin, energy security equals Russian national security, and it would not shy away from making oil and gas as significant tools of its foreign policy. Energy exports contribute about 30 percent of the Russia's budget and one of the top-ranking energy producing countries in the world. Apart from energy, there is a boom in Russian industrial exports which primarily consist of armaments and with advanced aircrafts, it accounts for more than half of industrial sales (Tymoshenko, 2007, p.72). With an increasing number of millionaires in Russia, the

[1] Dr. Sanjay Kumar Pradhan, Assistant Professor, Pandit Deendayal Petroleum University.

entrepreneurs have built good business in telecom, information technology, retail, brewing, food processing and consumer credit. Russia today possess the third-largest hard currency reserves in the world, and it is running huge current account surplus and paying off the last of the debts it accumulated in the early 1990s. The stability, sustained achievement and economic growth particularly appear to be matter when global issues are debated.

More to say, Vladimir Putin's popularity in the country is at high, 'Russia is back and Putin is in charge' (McAllister, 2006, p.17). Contrary to 'accommodating' approach of Boris Yeltsin (Goldman, 2003), Putin has been the best bargain the US can have and seeks to reverse the West's leverage over Russia (Hofmann, 2006). In the last years, under leadership of Vladimir Putin, Russia pursued an increasingly assertive, if not aggressive, foreign policy. Until Russia invaded Georgia in August 2008, the U.S. government largely attempted to ignore Russia's increasingly anti-American moves (Cohen, 2009). Like Putin, former President Dmitry Medvedev's also send a clear signal to the world that Russia has a "zone of privileged influence" and holds the veto power for the aspirations of the people living in it (Cohen, 2009). Apart from these perspectives, the regimes of Putin and Medvedev have nurtured Russians public opinion and propaganda to garner support for Russia's foreign policy objectives. Fear and hatred of a powerful enemy is 'used' by the political elites to rally popular support and justify assertive rhetoric towards the United States (Young, 2009). No doubt, many Russians have felt humiliated by their country's loss of superpower status after the Cold War. After nearly a century of failures and upheavals, Russia has a fragile collective ego. Many people of Russia view the west, particularly, the US with a mix of resentment and suspicion. Much of the current tensions in Russia today is largely due to America's conflicting foreign policy perspectives where Russia has triumphalist arrogance after the disintegration of Soviet Union (Young, 2009).

CONFLICTING AND SECURITY ISSUES IN EUROPE

In Europe, various attempts are being made by the US to contain Russia, including through the eastward expansion of NATO, drive to place missile defenses in Eastern Europe, installing anti-missile bases in Czech and Poland and achieve nuclear first strike against Russia (Cherian, 2007, p.50). For Washington, it is a prerequisite to shape the Black Sea region –another playpen of Russia-so that the NATO can take leap forward to the Caucasus-the 'notorious soft underbelly'. The newly-born countries from Yogoslavia are being systematically inducted into NATO; the US has set up military bases in Romania and Bulgaria (Bhadrakumar, 2008, p.50), and for the first time it has become a "Black Sea Power". Russia considers these efforts of US as a strategic challenge that requires a strategic response (Lavrov, 2007). Russian foreign minister Sergey Lavrov had bluntly warned his former American counterpart, Condoleezza Rice, that the American plan for a missile shield would turn Europe into a "powder keg". Putin had threatened to pull out of a cold war era treaty that limit intermediate-range missiles. In the opinion of Putin, "We may decide someday to put missile defense systems on the moon, but before we get to that we may lose a chance for agreement because of you (the US) implementing your own plans (Penketh, 2007). Moscow has decided to cancel the proposal for dismantling of the Kozelsk ICBM Division, and stationed short range and medium range nuclear missiles and electronic jamming systems in Kaliningrad, and justified Moscow's legitimate right to deploy tanks and heavy artillery on its western and southern borders (Zarakhovich, 2008). Moreover, Russia has suspended participation in the Treaty on Conventional Armed Forces in Europe (CFE) in retaliation to George W, Bush administration's abrogation of the Anti-Ballistic Missile (ABM) Treaty.

Russia uses oil diplomacy to reverse unfriendly cold war relationship with the European nations particularly the West European nations. Several reports of Duma fits into Moscow's implicit game plan to play the US "against" Europe. It was released on the eve of a Russian-

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French-German summit in Paris on 22 September 2006, where Putin announced Russia's plan to supply up to half of the natural gas from its vast Shtokman field to Europe, contrast to earlier plan of working with US to develop its Shtokman gas-the 'biggest gas field'. German Chancellor Angela Merkel has been in negotiation with Moscow for a new EU-Russia treaty for a lasting and mutually beneficial relationship on the lines of "collective energy market", which includes Russia and excludes America. Germany, one of the biggest powers from Europe, is dependent on Russia and in near future it is expected to get 80 percent of its oil and gas from Russia than its existing dependency of 44 percent since Russia is the best alternative to the Middle East hydrocarbon (McAllister, 2006, p. 17). There is a direct gas pipeline to Germany from Russia, bypassing countries like Poland-the former partner of Russia and a close ally of US today. Likewise, other European countries have signed contracts with Russian.

On the proposed membership of Ukraine and Georgia, both EU and NATO have reservations as they did not want a confrontation with Russia. NATO could not include a state (Georgia) that has not resolved its territorial problems (Proxy War….2008, p. 7). Like Russia, Germany and France line up against US invasion of Iraq. The Russian 'call' of multipolar world has support from France. President Putin in the Munich Conference on Security Policy, 2007, said that a Unipolar World has failed. Russia is against Americo-centrism and imposition of American culture, civilization and hegemony. Moscow has skillfully mobilised "old Europe"-France, Germany and Italy against the "New Europe" of East European countries-closely allied to the US, to foil Washington's efforts to set up a united anti-Russia front of European nations. As a consequence, the European Union (EU) also could not take the moral high ground on Russian role in Georgia because of US and NATO activities in Yugoslavia, Iraq and Kosovo. The EU accepted Moscow's demand to get Georgia renounce the use of force against its break away territories, and presence of Russian peace keeping forces in South Ossetia and Abkhazia.

CONFLICTS AND CONCERNS IN CENTRAL ASIA

In the opinion of former Secretary of State Condoleeza Rice, "central Asian region occupies a special place in the US' list of priorities and it is a zone of American strategic interest and influence" (Todd, 2006, p.12). Since 1991, Washington is strengthening its military presence in central Asia through the idea of "Greater Central Asia" which would include Afghanistan, oil rich Caspian region and central Asian states to wean away from Russia and China. The US also seeks to establish a transport corridor between Central Asia and South Asia by engaging Afghanistan. The idea is very much akin to White House pronouncements for a "new regional arrangement" in central Asia (Ali, 2005, p.3). These approaches can help Washington to enhance US military presence in central Asia. It is with that perspective, the American administration under George Bush focussed on cultivating the west-oriented political elite in the central Asian states, set up NGOs-controlled by groups opposed to the governments, imposed economic sanctions and boycotted anti-US governments. The activities of US on democracy and human rights were on the lines of exporting "democratic institutions" and "democracy" (Todd, 2006, p.12) to central Asia and rest of the Europe. So, the "colour revolutions" in the Russia's traditional zone of influence, 'engineered by CIA', threatened the Russian-backed governments and establishments.

The United States has engaged itself in strategic engagements and military installations in central Asian region. Kyrgyzstan and Tajikistan have offered 'base' facility and 'over flight' to the US. Turkmenistan, although announced the policy of 'complete neutrality,' has provided over-flight right to the US. *Turkmenistan is undertaking a feasibility study of a trans-Caspian gas-pipeline project that would avert the need for Turkmen gas to be exported via Russia (www.apanfocus.org).* Because of US presence in central Asia, Russia is putting all efforts to strengthen its hold through Common wealth of independent states (CIS) and Collective Security Treaty Organisation (CSTO). The CSTO has established a large number of military

bases in southern belt of central Asia and in the Caspian Sea. The CSTO could deliver pre-emptive strikes if threatened militarily and if Russia's access to central Asian region blocked" (Pradhan, 2006, p.42). Likewise, if Washington does move to set up permanent military bases in Uzbekistan and Kyrgyzstan the new relations will have to be viewed within the context of integrated system for Russian interest. Russia has planned to establish its air base at Kyrgyzstan just 30 kilometers from US air base in its capital Bishkek and deployed 201 military divisions and early warning system in Tajikistan. Putin has provided massive economic aid to central Asia and is primarily intended to thwart US Aid Diplomacy in the region. In short, Russia has sought to pursue a more vibrant and consistent strategy in the central Asian region.

CONFLICTING PURSUITS IN CAUCASUS

The US has developed bases in Azerbaijan and has built close military and political ties with Georgia and Azerbaijan. But Russia has resented this; the region is now deeply militarised and has become a contentious concern between Russia and the US. With the client state-Georgia the US wants to control Caucasus, check Russian influence in Eurasia and possible NATO cross over from the Black Sea region to the frontiers of Russia. The US has also declared Caucasus region as part of its national interest since oil pipelines passes through this region (Chenoy, 2008, p.18). The Baku-Tbilisi-Ceyhan pipeline project of US avoids Iranian and Russian territory, and thus Russia is apprehensive of losing its prominence in pipeline routes and energy supply (Proxy War----2008:7). From security perspective, the Caucasus mountain range roughly divides the south Caucasus, which consists of Georgia, Armenia and Azerbaijan, from the North Caucasus- a mosaic of Russian Republics. The fall of Georgia to US meant fall of southern Caucasus, loss of Russia's natural defensive position in the northern Caucasus and disintegration of Russia in the form of cessation of Chechnya and Dagestan. Hence, the Kodori Gorge that divides Russia and Georgia has seen years of low intensity fighting. There are reports that arms were reaching the Chechen guerrillas via Georgia through the Pankisi Gorge. Unfortunately, Georgia is not doing enough to stop the flow of weapons and smuggling across the border (Staff, *www.offnews.info* and Chenoy, 2008, p.18)

The Georgian crisis in the form of South Ossetia draws inspirations from Washington which is against Moscow's move for independence of South Ossetia and Abkhazia from the mainland Georgia. Russia has accused the US of using the former Soviet republic of Georgia as the pawn in its game against it, and thus providing all supports. The Georgian attack on South Ossetia and Russian interference is a reminder to bitter relationship that exists between US and Russia. In the case of Kosovo, NATO had pointed out that military interference was necessary due to Serbia's "loss of sovereignty". On the same line Russia argues that Georgia has lost its sovereign rights over South Ossetia. Russia reasoned fine that if US-backed NATO could justify hitting targets in Serbia for the separation and formation of Kosovo state, the same rationale could be used for Georgia. Apart from these logical arguments, Moscow also had the 1992 Sochi agreement, which gives Russia the mandate to "keep the peace" in South Ossetia, and 99 percent South Ossetians have voted for independence from Georgia in a referendum held in November 2006 (Kumar,2008, p.25).

CASPIAN SEA AND MIDDLE EAST- HOTBEDS OF GEOPOLITICS

On energy security, Putin stressed that the trans-Caspian energy pipeline, proposed by west, must be based on consensus among the five littoral neighbouring countries consisting Iran, Azerbaijan, Kazakhstan, Turkmenistan and Russia. This has come in reaction to Washington-backed Baku-Tbilisi-Ceyhan oil pipeline. Russia has been unhappy with the construction of pipelines from the Caspian region that bypass its territory and Iran. More to say, the US may consider the use of territory of Azerbaijan against Iran. In the Conference of Caspian Sea Countries (2007), Putin, like Mohd. Ahmadinejad, the former president of Iran, approached the Caspian countries not to offer their territories to third powers for use of force or military

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aggression against any Caspian state (Tait and Tran, 2007). Russia has assured Iran for the completion of the long delayed Bushehre atomic power plant and creating strategic alliances with Tehran (Cohen 2008) and Iran justified the role of Russia in South Ossetian crisis. Apart from Iran, the role of Russia in other parts of Middle East is revitalised yet again and calibrating its steps with cautious. Arab unhappiness with the US invasion of Iraq and stagnation in the Israel-Palestine peace process has given Kremlin an opportunity to revive strong ties with many Arab governments who are glad to see Moscow a counter weight to Washington. In 2005 Putin made the first journey to Cairo as a Russian head of state since Khrushev's visit in 1964 and started an Arabic-language TV channel in Russia for the Middle East to spread its influence. Moscow invited Hamas leaders to visit the country after they won the Palestinian elections-the organisation which is still on the US terror list, and Moscow has declined to brand Hezbollah as a terrorist organization.

STRATEGIC AND DEFENSE PURSUITS

After the years of cut in defense expenditure, the Russian government has been progressively increasing defense expenditure for the modernisation of its nuclear and conventional forces. For Russia, "the country must achieve supremacy in land, sea and air power in the world under the modernisation programme" (Radyuhin, 2016). Putin has warned Washington that if anti-missile interceptors were installed on its borders, then Russia would be justified in retaliating. Moreover, Putin said that if the American interceptors are mobilized then we disclaim responsibility for our retaliatory steps because it is not we who are the initiators (Cherian, 2007, p. 49). In 2007 Russia fired a new submarine-launched deadly variant of the Topol-M missile in the White Sea, to which even the USSR could not boast up and to which the proposed NMD could not track (Cherian, 2007, p.49). Moreover, NATO and Russia are engaged in the biggest build-up of naval and air force bases since the Gulf War-II. Five US strike groups have been sent to the Mediterranean and Gulf regions while Moscow has sent an aircraft carrier task to the eastern Mediterranean and deployed its Black Sea Fleet that includes Admiral Kuznetsov, nuclear powered aircraft carrier, to the Syrian port of Tartus which is close to Poti- the outlet of Baku-Tbilisi-Ceyhan pipeline in the Black Sea and which could foil US attack on Syria and Iran and which could be a set back to NMD. Putin also ordered the resumption of Russian long-range bombers to patrol around the world, particularly Pacific Ocean and Atlanctic Ocean. The bombers, armed with nuclear missiles, have also flown close to the US military base of Guam (*www.khilafah.com*).

CHINA-WHERE DOES IT STAND?

The strategic inroads-made into the central Asian region by the US and NATO forces, and turmoil in the Caucasus region are some of the factors which have posed serious implications, common for both Russia and China. The joint military exercise of SCO members in the Ural mountain regions proposal for joint drills between SCO and CSTO to increase military cooperation have merits to US-Russia defense calculus. China is the only member of the CSO that does not belong to CSTO which is described as Warsaw Pact-II. Both organisations have the same goal of combating terrorism and cooperating each other. A formalised partnership between them could lay the basis for a defense alliance between Russia and China in Central Asia and turn the SCO into an effective security mechanism and a counter weight to the US and NATO (Radyuhin, 2007, p. 60-61). On the other side, the frequently concluded Malabar exercise in the Indian Ocean is nothing but China sees it as a step towards the creation of an Asian NATO to counter China's growing economic, military and strategic influence.

CRIMEA AND SYRIA IN NEW ROADMAP OF US AND RUSSIA

ANNEXATION OF CRIMEA

Russia has geostrategic interest in Crimea. Firstly, Crimea is strategically important as a base for the Russian navy. Its Black Sea Fleet has been based on the peninsula and remains crucial to Russian security interests in the region. Secondly, Crimea still has a 60 per cent Russian population. Relations have been tense between Russia and Ukraine since the peninsula formally became part of Ukraine after the fall of the Soviet Union in 1991 (Mortimer, 2014). Thirdly, Ukraine, a close ally of US, is looking for its membership in NATO and Ukraine-NATO joint military exercise has been has conducted in the Black Sea.

On the other hand, for US, Ukraine and Crimea annexation has larger implications. Firstly, US want Ukraine to be an independent neutral zone between NATO and Russian military forces. Secondly, falling of Crimea or Ukraine means other European countries will be pulled towards Russia in due course of time the United States don't want Russia to conclude that it wants to break and then do it elsewhere. Thirdly, in 1991 when the Soviet Union collapsed, Ukraine had on its territory the third largest nuclear arsenal in the world. They gave that up at the urge of Russia, the US and UK because of security assurances to respect Ukrainian independence and its territorial integrity (Page, 2014). Fourthly, a Russian empire on the edge of Europe risks permanent conflict, war and challenge to US interests.

SYRIAN CIVIL WAR

The United States has direct interest in Syria and but not interested to get embroiled in the civil war to oust Assad government, who is backed by Russia. The United States aims to defeat IS and other terrorist groups in Syria since it will lead to proliferation of the terrorist groups at the global level and the security threat it poses to the US interest (Booth, 2016). But on the other way, Russia has access to the Mediterranean through its naval base at Tartus - Russia's only base in the Mediterranean since Soviet perod, which helps it asserting its military presence in the region and access to the world. Like USSR, Russia has a market for arms sales and the Syrian government is a potential buyer to it. More to say, Russia's military effort in the Syrian conflict is a marketing campaign to demonstrate the development of its weapons and equipment in order to attract global sales (Booth, 2016).

Speaking to reporters, US Secretary of State, Rex Tillerson, reiterated Washington's position that Assad must eventually relinquish power - a position starkly at odds with Russia, which has been bombing rebel-held areas in Syria in support of Assad's forces. For Russian part, Sergey Lavrov of Russia warned against an international effort to remove Assad, citing the cases of Iraq and Libya to argue that toppling rulers by external forces leads to chaos (www.aljazeera.com, 13 April 2017). Most recently, the US missile strikes against the al-Shayrat airbase of Syria following a suspected gas attack in Khan Sheikhoun, was reacted by Russia as “aggression against a sovereign state" (www.aljazeera.com, 13 April 2017).

THE OBAMA WAY AND TRUMP APPROACH

Unlike Bush, President Barack Obama’s top foreign policy priorities were to stop the drift in US-Russia relationship. The most significant step taken by Obama administration includes signing of Arms Treaty in 2010- the successor to Strategic Arms Reduction Treaty (START). As per the agreement, each country is to shrink its strategic and deployed nuclear warheads, reduce the number of bombers and missiles and reduce intercontinental ballistic missile (ICBM) launchers (Cunningham, 2010). However, there are some constraints to it. Firstly, while the US issued a statement allowing for the continued development and deployment of its missile-defense systems for national security, Medvedev warned that Russia could withdraw from the treaty if the United States increased its missile-defense systems in a way that poses a

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threat to Russia's strategic nuclear potential (www.rferl.org/content/ and Marcus, 2010). Secondly, the agreement focused on deployed warheads not stockpiles; strategic, not tactical and nuclear weapons; and Thirdly, the treaty will not come into force until it is ratified by both the countries' legislative branches.

President Obama urged Russia not to interfere in neighbouring states and to move on from “old ways of thinking", "privileged interests" and “sphere of influence along its borders” (Kramer, p. 2010, p. 63). By defending state sovereignty, Obama described it as a “cornerstone” of international order. And Washington would not tolerate another Russian invasion of Georgia and independence of two breakaway provinces supported by Moscow (The Washington Post, 6 July 2009). But for Putin, US plan of missile defense system in Poland and the Czech Republic, admission of Ukraine and Georgia into NATO and Western involvement in the North Caucasus are non-negotiable and without qualification. Obama’s speech at Moscow’s New Economic School in 2009 admitted the difficulty of forging a lasting partnership between the former adversaries (Hurst, 2009). While the Obama government went with “resetting” the relationship between the two nations, the Russians themselves engaged vigorously in a "reset" project of their own. Although it is too early to speak about any significant headway in Donald Trump-Vladimir Putin foreign relationships yet speaking at an economic forum in St. Petersburg, Putin said, relations between Moscow and Washington are now at their “lowest” point since Cold War times (Metzel, http://nationalpost.com). Hopes for better ties between Russia and the US today have been dashed with the congressional and FBI investigations into the Trump’s election campaign ties with Russia, intensification of sanctions against Russia, diplomatic imbroglios and miles apart on Syria.

CONCLUSION

The existing relationship between Russia and America is challenging and competitive in nature with geo-strategic and security implications. The question isn't who is right or wrong, rather whose argument seems more appropriate and ethical. *Russia is resurgent although not aggressive in its global approach. Both United States and Russia in the post-cold war era wants to maximize benefits in the light of relative gains from the* great game where control over strategic locations, security and resources drive foreign policy perspectives. *While US promotes its interest by expanding zones of interest, the resurgent Moscow wants to check the expansionist ambitions of US which hampers its interest. While US is intended to balance the existing world order, Russia* appears determined to reassert its past glory and offset the world order which has largely been defined and set by the United States. *In a reaction to Washington’s “status quoist” global world order, Russia exercises a measured US policy and* refuses to shallow the West's prescriptions on lot of international issues. Hence, the spirit of U.S.-Russia ‘strategic partnership’ of the early 1990s has been replaced by increasing tension and mutual recrimination today. South Ossetia, Crimea and Syria are the instances where Kremlin has straightened its muscles against the US. The recent period seems an *era of competitive bargains and security concerns between two powers. Security and conflicts have not taken centre-stage of their bilateral negotiations as it was during cold war. Hence these problems have developed an unfriendly atmosphere to resolve long-standing disputes and emerging issues. Kremlin doesn't want to escalate tension again. But it isn't clear that the Kremlin is capable of preventing that.* Most important today is how to stop US-Russia relations from getting worse than making it better.

The future of US-Russia relationship much depends on the resolution of conflicting issues. Although president Obama had shown his sincerity, yet both the nations could not reach at a logistic solution to the issues of concern. The western sanctions have hardly changed the mindset of the Russians and its economy. Most recently the act of shutdown of consulate offices by both the countries have escalated tension and conflict between Moscow and Washington.

All these differences and security challenges are largely due to fundamental difference in values, interests, and outlook between the two countries. *It is not an impossible task of reaching at a permanent solution; flexibility and compromise approach between the two nations could overcome the existing tangles and this could be possible only in an atmosphere of mutual understanding and mutual trust with a remind: mutual distrust, suspicion and misunderstanding were the cornerstones of cold war rivalry and they must not* plunge into "new cold war" and work to overturn deficit of trust to surplus of trust and security threat to security ally.

REFERENCES

Ali, M. (2006) US, Afghanistan, Central Asia: The New Game. *Mainstream*, 44 (21), 8.

Ali, A. (2005) New US Game in Central Asia. *Mainstream*, 43 (51), 3.

Bhadrakumar, M. K. (2007) In the Trenches of the New Cold War: The US, Russia and the great game in Eurasia. *The Asia-Pacific Journal*, 5 (4) [Online]. Available from: *www. apanfocus. org/_M_K_Bhadrakumar [Accessed 12 July 2017]*.

Bhadrakumar, M. K. (2008) Caucasus Crisis. *Frontline*, 25(18), 49-53

Booth, A. (2016) Why the US and Russia are involved in the Syrian war and what lies ahead. [Online]. Available from: http://www.sbs.com.au/news/explainer/why-are-us-and-russia-involved-in-syrian-war-and-what-lies-ahead *[Accessed 28 August 2017]*

Chenoy, A. (2008) The Russian-Georgian Confrontation. *Economic and Political Weekly*, 43 (34), 17-18.

Cohen, S. F. (2008) The New American Cold War. [Online]. Available from: http://www .thirdworldtraveler. com/Russia/ New_Cold_War_Russia.html *[Accessed 11 May 2011]*.

Cherian, J. (2007) Russia Resists. *Frontline*, 24(15), 48-51.

Cohen, A. (1997) A New Paradigm for U.S.-Russia Relations: Facing the Post-Cold War Reality. [Online]. Available from: http://www.heritage.org/Research/RussiaandEurasia/BG1105.cfm *[Accessed 23 June 2011]*.

Cohen, A. (2009) Russia and Eurasia: A Realistic Policy Agenda for the Obama Administration. [Online]. Available from: http://www. heritage. org/research/RussiaandEurasia/sr0049.cfm *[Accessed 11 May 2011]*.

Chomsky, N. (2008) Ossetia-Georgia-Russia-U.S.A.: Towards a Second Cold War?' [Online]. Available from: http://www.uni-kassel.de/fb5/ frieden/regionen/Kaukasus/chomsky.html *[Accessed 11 May 2011]*.

Cunningham (2010) B. Obama, Medvedev Signs Historic Arms Treaty. [Online]. Available from: http://www.nbcnews.com/id/36254613/ns/politics-white_house/t/obama-medvedev-sign-historic-arms-deal/ *[Accessed 13 June 2011]*

Goldman, Stuart D. (2003) US Policy towards Russia. [Online]. Available from: http://www.policyalmanac. org/ world/ archive/ russia.shtml *[Accessed 13 June 2011]*.

Hofmann, M. (2006) *US foreign policy towards the Russian Federation: The constrained Empire*. London: GRIN

Hurst, Steven R. (2009) Mixed results for Obama's first Moscow Summit, *The Daily Herald*, 7 July. [Online]. Available from: http://www.rrdailyherald.com/news/mixed-results-for-obama-s-first-moscow-summit/article_dfb2646f-0f31-5ca8-9df5-9205a6195746.html [Accessed 26 July 2016]

Kramer, David J. (2010) Resetting US-Russia Relations: It Takes Two. *The Washington Quarterly*, 33 (1), 61-79

Kumar, R. S. (2008) From Kosovo to Georgia: The US, NATO and Russia. *Economic and Political Weekly*, 43 (36), 24-27.

Lavrov, S. (2007) Containing Russia: Back to the Future'. *The Hindu*, 7 September, 12

ISBN: 978-1-911185-43-7 (Online)

Marcus, A. (2010) Obama, Medvedev Sign Nonproliferation Treaty. [Online]. Available from: http://blogs.america.gov/ obama *[Accessed 11 May 2011]*.

McAllister, J. F. O. (2007) Russia's New World Order. *Time*, 168 (2), 17-25.

Metzel, M. (2017) Putin says U.S.-Russia relations at worst point since Cold War, asks business leaders for help, *National Post, 2 June.* [Online]. Available from: http://nationalpost.com/ news/world/ putin-says-u-s-russia-relations-at-lowest-point-since-cold-war-asks-american-business-leaders-to-help-trump/wcm/06d1cab2-109e-4677-88e3-ed3b7a21fc8d *[Accessed 27 August 2017]*

Mortimer, C. (2014) Ukraine crisis: Why is Crimea so important to Russia? [Online]. *Independent*, 3 March. Available from: http://www.independent.co.uk/ news/world/ europe/ ukraine-crisis-why-is-crimea-so-important-to-russia-9166447.html *[Accessed 16 August 2016]*

Page, S. (2014) A new cold war? Why Crimea should matter to Americans. [Online]. *USA Today*, 14 March. Available from: https://www.usatoday.com/story/news/politics/2014/03/14/ usa-today-capital-download-steven-pifer-ukraine-russia-crimea/6382965/ *[Accessed 16 August 2016]*

Pradhan, S. K. (2006) Interest of Russia in Central Asia: An Overview. *South Asia Politics*, x (1), 40-45.

Penketh, A. (2007) Putin on the attack over US missile defence. [Online]. *Independent,* 12 October. Available from: http://www.independent.co.uk/news/world/europe/putin-on-the-attack-over-us-missile-defence-396732.html [Accessed 22 August 2017].

Proxy War in the Caucasus. *Economic and Political Weekly*, 2008, 43 (35), 6-7.

Radyuhin, V. (2007) War Games in the Urals. *Frontline*, 24 (18), 60-62.

Radyuhin, V. (2016), Russia to modernise armed forces. [Online]. *The Hindu*, 9 October. Available from: http://www.thehindu.com/todays-paper/tp-international/Russia-to-modernise-armed-forces/article15312509.ece [Accessed 24 August 2017]

Staff, Stratfor, Geopolitical Diary: Russia Rewrites the Post-Cold War Rule Book. [Online]. Available from: http://www.offnews.info/verArticulo.php?contenidoID=9181 *[Accessed 27 February 2017]*

The Geopolitics of the Russian-US Conflict. [Online]. Available from: http://www. khilafah.com/ index.php/ analysis/ europe/51-europe/3501 [Accessed 19 March 2017]

Todd, B. (2006) US engendering Instability. *Mainstream*, 44 (26), 12-13

Tait, R. and Tran, M. (2007), Putin warns US against military action on Iran. [Online]. *The Guardian*, 16 October. Available from: https://www.theguardian.com/world/2007/ oct/ 16/ russia. iran [Accessed 16 August 2016].

Tymoshenko, T. (2007) Containing Russia. *Foreign Affairs*, 86 (3), 69-82

US-Russian ties 'at low point' as Syria tensions rise, 13 April 2017. [Online]. Available from: http://www.aljazeera.com/news/2017/04/russian-ties-point-syria-tensions-rise-70412193104293. html *[Accessed 1 September 2017]*

Young, Cathy. (2009) Will there be a thaw in US-Russian relations? [Online]. Available from: www.boston.com *[Accessed 22 September 2011]*

Zarakhovich, Y. (2008) Moscow's Challenge to Obama. [Online]. Available from: http://www.time. com/time/world/article/0,8599,1857114,00.html *[Accessed 14 December 2011]*

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THE RELATIONSHIP BETWEEN CITIZENSHIP AND SOCIAL SOLIDARITY

MR. YAOXI SONG[1]

ABSTRACT

In the research on rights theory, social solidarity is an unfinished area. My research interprets it in the sense of such citizenship which provides an important solidarity resource for the society full of differences. Citizenship, related to the problem of how to define the relationship among citizens as well as that between citizens and state, is a concept of intersubjectivity. It is, in essence, an exclusive concept, but this exclusion bears a kind of solidarity illusion with inclusive concept. This inclusive illusion strengthens social solidarity through the configuration of rights and obligations and identity construction. In our day, the nation-state system and its ethnic cultural background are the boundaries between the inclusiveness and exclusiveness of citizenship. Therefore, in order to ensure more people to obtain citizenship, we must break through the nation-state system and update citizenship to human rights.
Keywords: Citizenship, Social Solidarity, Relationship

INTRODUCTION

In both the fields of thought and the practice of history, there is an essential theme that seems common-sense one. The theme is the relationship between self and others, individual and society, unity and alienation, namely, how we live in harmony with each other. Actually, the theme in question is one about social solidarity focusing on how the transformation from "I" to "We" can be succeeded.

The central issue of social solidarity is: how can we co-exist? The issue is pressing heavily us in the 21st century for an answer. In most countries and regions, the issue involves with and manifests itself as the following aspects: the problems of social inequality and injustice caused by the unfair distribution of social resources, the problems of ethnic identity caused by ethnic differences and immigration politics, the problems of class differentiation caused by the gap of wealth and the different degree of education, the problems of cultural identity caused by multicultural conflict and collision, the problems of body and gender politics caused by sexism and homosexuality, the problems of the insufficient rights of livelihood and democracy caused by the different access to social, economic and cultural resources, the crisis of confidence between governments and citizens or among citizens caused by power rent-seeking and market competition in our transformational society. There are so many differences mentioned above existing today, is there one "SOCIETY"? How can social solidarity be possible? The differences in question are expressed in the language of rights and obligations, even of citizenship, which demands to recognize and redistribute social resources, we, as legal philosophers have the responsibility to respond to the issues.

SOCIALSOLIDARITY: THE UNFINISHED AREAS OF THE RIGHT RESEARCH

Society is the basis of the study of rights. Rights can make sense only in the context of social relations and social system. It is necessary to study the issue of identity which belongs to the field of social relations and social system, because the identity of the right subjects affects the acquisition and enjoyment of rights. The law is the study of the rights and obligations brought by the relationship of identity (social relations). The struggle and conflict of legal rights are in essence the struggle and conflict of the identity, because of the fact that rights are based on the identity. In this sense, it is safe to say, no identity, no rights. In pre-modern times, identity was

[1] Guangzhou University, China. Visiting Scholar, University of Cambridge, United Kingdom.

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characterized by inequality, such as aristocrats and slaves, feudal lords and vassals, Kings and subjects and so on. Since modern times, the identity relationship between human beings has been becoming equal gradually. The identity with equality is the identity of the citizens. The identity of the citizens is the premise on that a man can acquire citizenship.

Social solidarity has always been an important subject matter of political philosophy, sociology and anthropology, and also an significant theme in legal sociology. legal philosophers focus on the issues of whether society can be united and how society is united. In the fields of political philosophy, sociology and anthropology, the resources to realize social solidarity may be some kinds of ideas, ideology, religious norms, ethics, social customs and institutions, etc. (Marshall,1950;Turner,1994;Mann,1996;Bingzhong,2006; Xiaozhang,2009) In the field of legal sociology, it is through the social control of law to achieve social integration and solidarity (Hongyi ,2000;Quanying,2009). But in the study of social solidarity, few scholars study the issue of social solidarity from the perspective of citizenship. And social ties or social relevance between individual and society established through citizenship are ignored to some extent by scholars.

Citizenship is one of the core concepts in political philosophy, there are many scholars who have probed into this issue deeply. Among them, both Parsons and Turner have explicitly mentioned the issue of the relationship between citizenship and the social solidarity, but it a pity that they have not made a system, in-depth research on it. Alexander (1992, p.289) offered a criticism of sociology in which the issue of the solidarity in civil society: “Sociologists have written much about the social forces that create conflict and polarize society, about interests and structures of political, economic, racial, ethnic, religious, and gender groups. But they have said very little about the construction, destruction, and deconstruction of civic solidarity itself. They are generally silent about the sphere of fellow feeling that makes society into society and about the processes that fragment it.” The issue of civic solidarity is actually the issue of social solidarity, which should not and cannot be ignored.

THE BASIC THEORIES OF CITIZENSHIP

The brief review mentioned above indicates that few scholars have conducted special and systematic studies on the relationship between citizenship and social solidarity. This paper attempts to study the relationship between social solidarity and citizenship that recognizes and requires the redistribution of social resources. The traditional studies of civil rights do not effectively respond to the issue of social solidarity. The present research on citizenship and civil right protection practices mainly focus on the issue how to satisfy the rights of individual citizen of vulnerable groups, which usually is a kind of simply temporary satisfaction for vulnerable groups, because the satisfaction of the rights in question does not mean the citizenship is achieved. As a result, the vulnerable groups’ citizenship is not recognized in their community, and the vulnerable groups are still marginalized. This intensifies the solidification and division of social classes. This is actually a kind of palliative approach and appeasement, which neglects both the social aspects and social integration function of rights, and the latter refers to the social solidarity dimension of citizenship. Social solidarity is a central proposition in social theory. It respects for social diversity, and at the same time, it maintains the unity of society so that society does not divide.

Therefore, this article redefines citizen right according to the meaning of citizenship which provides an important element of solidarity for the existence of a society with diversity. Parsons (1971, p.22) understanding citizenship as a full membership of the community, and points out that there is a kind of relevance between the citizenship and social solidarity: “the development of modern institutions of citizenship has made possible broad changes in the pattern of nationality as a basis of the solidarity of the societal community. In early modern society, the strongest foundation of solidarity was found where the three factors of religion,

ethnicity and territoriality coincided with nationality. In fully modern societies however, there can be diversity on each basis, religious, ethnic, and territorial, because the common status of citizenship provides a sufficient foundation for national solidarity." Turner (2000, p.37) has one similar opinion when he said: "Citizenship provides a form of solidarity, if you like a kind of social glue, that holds societies together which are divided by social class, by gender, by ethnicity and by age groups. The solidarity of the political community of modern societies is provided by citizenship, which works as a form of civic religion."

Citizenship not just involves in civil rights. From the perspectives of legal sociology and political philosophy, it refers to the institutionalization of the relationship between citizens, between citizens on the one hand and nation on the other; it consists of the membership and legal identity of one citizen in a nation, and in the rights and obligations that closely connect with the membership and identity in question. "Citizenship gives individuals and groups access to resources in society. These legal rights and obligations, once they are institutionalized as formal status positions, give people formal entitlements to scarce resources in society, basically economic resources such as social security, health-care entitlements, retirement packages, or taxation concessions, but also including access to culturally desirable resources (within a traditional liberal framework) such as rights to speak your own language in the public arena or rights relating to religious freedoms. These resources therefore include both the traditional economic resources of housing, health, income, employment and so forth, and also cultural resources such as education, religion and language. There are also political resources, which are related to access to sources of power in society, rights to vote, rights to participate politically and so forth. In summary, it may be conceptually parsimonious to think of three types of resource: economic, cultural and political." (Brown et al.,2000, p.36)

This article regards this kind of civil rights as the social transformation force, and examines how the relationship between citizenship and social solidarity has evolved from modern times to contemporary. The evolution includes two aspects. On the one hand, what are the conditions under which the state's allocation of citizenship will lead to social schism, and what are the conditions by which the state's allocation of citizenship will lead to the promotion of social solidarity. On the other hand, how social schism and social solidarity are counteractive to citizenship, so that citizens' rights and obligations are evolving. That is to say, this article probes into not only how citizenship smoothes the way for social solidarity, but also how citizenship hinders social solidarity. Namely, the article examines the interplay between citizenship and social solidarity, the effect of citizenship over social solidarity and the influence of social solidarity over citizenship.

In the west, it is a central theme in the fields of philosophy and politics. Shklar (1991, p.1) believed that "There is no notion more central in politics than citizenship, and none more variable in history, or contested in theory." Citizenship focuses on what a citizen can do, and it is a concept of democratic practice in action. There are "two traditions and interpretations of the nature of citizenship. There is the civic republican style, which places its stress on duties, and the liberal style, which emphasizes rights. Now, despite the former's origins in classical antiquity and therefore its longevity, it is the liberal form that has been dominant for the past two centuries and remains so today." (Heater,1999, p.4). Habermas (1995, p.261-262) also summarizes on these two seemingly contradictory traditional from the perspective of legal philosophy: "The role of the citizen is given an individualist and instrumentalist reading in the liberal tradition of natural law starting with Locke, whereas a communitarian and ethical understanding of the same has emerged in the tradition of political philosophy that draws upon Aristotle. From the first perspective, citizenship is conceived in analogy with the model of received secures membership in an organization which secures a legal status. From the second, it is conceived in analogy with the model of achieved membership in a self-determining ethical community. In the one interpretation, the individuals remain external to the state, contributing

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only in a certain manner to its reproduction in return for the benefits of organizational membership. In the other, the citizens are integrated into the political community like parts into a whole, that is, in such a manner that they can only from their personal and social identity in his horizon of shared traditions and inter-subjectively recognized institutions. In the former, the citizens are no different than private persons who bring their prepolitical interests to bear vis-à-vis the state apparatus, whereas in the latter, citizenship can only be realized as a joint practice of self-determination."

The core of citizenship is inclusion and exclusion which are different in different historical periods. The connotation of inclusion and exclusion was expressed through the fact whether citizens have the right to participate in the political affairs of the polis. In modern times, through the membership system based upon the nationality in a given nation-state, citizenship elevates human beings from the feudal hierarchy, then equality, universal and homogeneous citizens come into being, therefore, being and/or not being a member of the nation-state is the sign of inclusion and exclusion. In contemporary, the basis, body and nature of modern citizenship are challenged by globalization, post-modernity tendency and multiculturalism. Citizens are no longer an expression of a universal and homogeneous identity, but individual citizens with the various differences in a series of aspects, such as ethnic group, race, culture and so on. This difference turns the minority of people with some specific features about ethnicity, race or culture into "second-class citizens" or the underlying subaltern. Then the new changes take place in the criteria of inclusion and exclusion changed, and nation-states no longer undertake the mission of tolerating all members of society and become the main basis for exclusion.

CONTEMPORARY PARADOX OF MODERN CITIZENSHIP

Paradoxically, the extreme development of modernity and the advent of the era of individualism have led to the disintegration of social solidarity. As Mayhew (1990, p.296) points out: "Modernization, then, becomes a process of dissolving communal. Social mobility, Population density, secular attitudes and above all, the market nexus destroy face-to-face personal ties and loyalties and replace them with the more tenuous, brittle, selfish interpersonal interests created by trade, urban life, and large-scale association." The basic symbol of modernity is the acquisition of subjectivity and the birth of self. This makes "ego" an "abstract legislator", excludes "everyone" outside "ego" as alienated "Other". Therefore, "the interpersonal relationship becomes a kind of the mutual objective relationship of each other, from which it is impossible to establish a solidarity of mutual recognition between the subjects" (He, 2007). The objective logic that distinguishes extremely "self" from "Other" become the most hegemonic ruling principle in modern times, deconstructs the "We". It is the secret of the schism of modern society.

"various struggles based upon identity and difference (whether sexual, 'racial', 'ethnic', diasporic, ecological, technological, or cosmopolitan) have found new ways of articulating their claims as claims to citizenship understood not simply as a legal status but as political and social recognition and economic redistribution" (Isin and Turner, 2002,p. 2). In other words, in modern times, rather than merely focusing on citizenship as legal rights, there is now agreement that citizenship must also be defined as a social process through which individuals and social groups engage in claiming, expanding or losing rights. Being politically engaged means practicing substantive citizenship, which in turn implies that members of a polity always struggle to shape its fate (Isin and Turner, 2002, p. 4). This shape provides actually contemporary pluralistic society with a new form of citizenship in the background of modernity, globalization and multiculturalism, in order to rebuild political community and social solidarity relation. This new form of citizenship must has the capacity of tolerating and

recognizing differences, the ability to respond effectively to differences. This raises the question of what citizenship is needed in contemporary society.

Kiymlicka and Norman (1994, p. 369-370) said: "Citizenship is not just a certain status, defined by a set of rights and responsibilities. It is also an identity, an expression of one's member- ship in a political community. Marshall saw citizenship as a shared identity that would integrate previously excluded groups within British society and provide a source of national unity. He was particularly concerned to integrate the working classes, whose lack of education and economic resources excluded them from the 'common culture' which should have been a 'common possession and heritage' (Marshall 1965, p. 101-2) It has become clear, however, that many groups-blacks, women, Aboriginal peoples, ethnic and religious minorities, gays and lesbians still feel excluded from the 'common culture', despite possessing the common rights of citizenship. Members of these groups feel excluded not only because of their socioeconomic status but also because of their sociocultural identity-their 'difference' ". This cultural difference is expressed as the language of citizenship requiring recognition, we call it "multicultural citizenship".Multicultural citizenship "signals a general concern for reconciling the universalism of rights and membership in liberal nation-states with the challenge of ethnic diversity and other ascriptive 'identity' claims". (JOPPKE,2002, p.245) In other words, "How can we construct a common identity in a country where people not only belong to separate political communities but also belong in different ways that is, some are incorporated as individuals and others through membership in a group? Taylor calls this 'deep diversity' and insists that it is 'the only formula' on which a multination state can remain united (Taylor,1991). However, he admits that it is an open question what holds such a country together. Indeed, the great variance in historical, cultural, and political situations in multination states suggests that any generalized answer to this question will likely be overstated. It might be a mistake to suppose that one could develop a general theory about the role of either a common citizenship identity or a differentiated citizenship identity in promoting or hindering national unity (Taylor, 1992b, p. 65-66)" (Kymlicka and Norman, 1994, p.377). The realization of social solidarity has no universal solution in the world and must be combined with the practice of citizenship struggle. Inclusion and exclusion are two sides of the citizenship system, so that we cannot ignore the other side when we discuss either side. However, this does not mean that citizenship in practice will be equal and balanced in the social consequences of inclusion and exclusion. Citizenship is, in essence, an exclusive concept, but this exclusion bears a kind of solidarity illusion with inclusive concept. This inclusive illusion strengthens social solidarity through the configuration of rights and obligations and identity construction. In fact, the nature of citizenship is of exclusion, citizenship is only the result of enlarging citizenship coverage to the population through state grants or the underlying struggle, that is to say, inclusion is only to strengthen and overcome exclusion, and the exclusive nature of citizenship has not changed. But the significance of inclusion in citizenship is that it regulates and leads the development direction of citizenship. Here, we can see that there is a tension that is characterized by conformity and conflict simultaneously between the exclusive essence of citizenship and social solidarity (the inclusive orientation of citizenship).

CONCLUSION

The fact that nature of citizenship is characterized by inclusion and exclusion simultaneously results in the fact citizenship is limited rigidly within modern nation-state system. It treats citizens as citizens of nation-state rather than citizens of the world. Both the exclusion of citizens by the national boundaries and the discrimination and exclusion of heterogeneous cultures by the ethnic culture that is the foundation of one nation-state impede the progress and development of citizenship. I believe that the development of the citizenship system should

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transform from the nation-state to the world, from citizenship to human rights, and actualize ultimately the solidarity of human society as a whole. This is not an unattainable utopia, but an urgent need and an inevitable choice for the realization of harmonious coexistence of human beings as a whole.

REFERENCES

Alexander, J. (1992) Citizen and Enemy as Symbolic Classification: On the Polarizing Discourse of Civil Society. In: Michele Lamont and Marcel Fournier(eds.). *Cultivating Differences: Symbolic Boundaries and the Making of Inequality*. Chicago: The University of Chicago Press, 289-308.

Bingzhong, G. (2006) Associational Cooperation and the Organic Solidarity of Chinese Civil Society. *Social Sciences in China*, (3), 110-123.

Habermas, J. (1995) Citizenship and National Identity: Some Reflections on the Future of Europe. In: Beiner, R (ed.). *Theorizing Citizenship*.New York: State University of New York Press.

He, L. (2007) A philosophical demonstration of social solidarity and social unity. Tianjin Social Sciences, Issue 05, 24-30.

Heater, D. (1999) What is Citizenship? Cambridge: Polity Press.

Hongyi, G. (2000) The Law of Social Unity: A Legal Reflectionon Theory of Durkheim Sociology. *Modern Law Science*, 22 (04), 140-144.

Isin, E. and Turner, B. (2002) Citizenship Studies: An introduction. In: Isin, E. & Turner, B. (eds.). *Handbook of Citizenship Studies*. London: Sage Publications.1-10.

Joppke, C. (2002) Multicultural Citizenship. In: Isin, E. & Turner, B. (eds.). *Handbook of Citizenship Studies.* London: Sage Publications.245-258.

Kevin. B, et al. (eds.) (2000) *Rhetorics of Welfare: Uncertainty, Choice and Voluntary Associations.* London: Macmillan Press Ltd.

Mann, M. (1996) Ruling Class Strategies and Citizenship. In: Bulmer, M. & Ress, A. (eds). *Citizenship Today: The Contemporary Relevance of T.H.Marshall.* London: The UCL Press.

Marshall, T.H. (1950) *Citizenship and Social Class and Other Essays*. Cambridge: Cambridge University Press.

Mayhew, L. (1990) The Differentiation of the Solidary Public. In: Alexander, J. & Colomy, P. (eds). *Differentiation Theory and Social Change: Comparative and Historical Perspectives*. New York: Columbia University Press.

Parsons, T. (1971) *The System of Modern Societies. Englewood Cliffs*. NJ: Prentice Hall.

Quanying, D. (2009) Knowledge Structuring of the Science of Law in Unified Country and Its Function, Social Sciences in Xinjiang, Issue (3). 69-74

Shklar, J, (1991) *American Citizenship: The Quest for Inclusion.* Cambridge, Mass: Harvard University Press.

Turner, B. (1994) Outline of a Theory of Citizenship. In: Turner, B. and Hamilton,P.(eds).*Citizenship: Critical Concepts(I).* London: Routledge.

Kymlicka, W. and Norman, W. (1994) Return of the Citizen: A Survey of Recent Work on Citizenship Theory. *Ethics*, 104(2), 352-381.

Xiaozhang W. (2009) From “Existence” to “Recognition”: Issues of peasant workers in the view of citizenship. *Sociological Research*, Issue 1, 121-138.

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DO ORGANIZATIONAL CULTURE AND STRUCTURE ENHANCE INTERNAL CONTROL EFFECTIVENESS? EVIDENCE FROM MALAYSIAN SOCIAL COOPERATIVES

NUR AIMA SHAFIE[1], MARLIA OTHMAN, ABD HALIM MOHD NOOR, ZURAIDAH MOHD SANUSI AND RAZANA JUHAIDA JOHARI

ABSTRACT

Similar to private and public sector, internal control in cooperative plays an important role on the successfulness of the organization and is a mirror to effective governance. Nonetheless, little is known about the effectiveness of internal control of cooperative in Malaysia as current practice did not require the organization to follow any prescribed standard of internal control and to report it in their annual report. Hence, this study will shed some light on the factors that influence the effectiveness of internal control in cooperative. This study focuses on the examination of cooperatives' organizational culture, organizational structure and age of cooperative on internal control effectiveness. Data were collected using questionnaires and were distributed to Top 100 Cooperatives for the year 2014. Based on the analysis of 56 responses received, regression analysis revealed that only organizational culture and cooperative age shows a significant relationship with internal control effectiveness in Malaysian cooperatives.

Key words: Internal control effectiveness, cooperative, social enterprises, contingency characteristic

INTRODUCTION

The establishment and movement of cooperative globally have been driven by ideas of democracy which is a socioeconomic philosophy that suggest an expansion of decision-making power from small minority shareholders to a large majority of public shareholders. The formation of cooperative is to fulfill the need and demand from the unfortunate community by pursuing social, economic goals, involving the provision of services and community's economic revitalization (Leviten-Reid & Fairbairn, 2011). International Co-operative Alliance (ICA) defines cooperative as "an autonomous association of person united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise". Cooperative principles are based on the strong orientation toward the general interest of public than most traditional private companies. Cooperative, which pooled together the collective resources, assists the less fortunate people in reducing the risk of vulnerability and rising out of poverty. These social problems can be alleviated through a collective approach towards social protection as practice by cooperative (UN, 2003; Hagen, 2004).

The cooperative is different from traditional private firms and traditional non-profit organizations. They do not only combine the social goals of the traditional non-profit organization with commercial characteristics of a corporation, but also have a unique ownership and membership structure. The cooperative members have full control right over the firms, but not over its profit from when the cooperative are allowed to distribute part of the profit, their assets are normally locked (Hansman, 1996). The cooperative has a multiple stakeholder membership, including their governance, involve different actors participating in the production process, including workers, volunteers, and customers (Thomas, 2004). Based on the principles and structure of cooperative, cooperative can be seen a type of social

[1] Faculty of Accountancy, Universiti Teknologi MARA, Accounting Research Institute (ARI), Malaysia

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enterprises, and they represent one of the most developed and successful models of social enterprises (Borzaga et al., 2014).

Cooperatives have similar requirements as other business organizations in achieving business goals and performance, although are different in organizational characteristics, thus outlines the need and importance of internal control effectiveness in cooperative organizations. O"Connor (2003) had stated several reasons why corporate governance is difficult in cooperatives compared to other organizations. One of the problems is the absence of effective oversight (control) by the owners (directors) of cooperatives other than public companies. Additionally, compared to directors of public companies, cooperative directors typically have less expertise and thus, less incentive in providing effective corporate governance. Understanding that effective internal control is a function of corporate governance, problems within the corporate governance also indicate problems in its internal control. Cooperative without effective internal control can lead to financial misappropriation by the person in charge within the management.

Although the professional literature on internal control has made progress in discussing internal control and its effectiveness, the amount of research within this area is scarce (Jokipii, 2009), particularly on Malaysian cooperatives. There are several studies on internal control in private sectors (e.g Public Listed Companies and Small-Medium Enterprises), public sectors and non-profit organizations in Malaysia (Fadzil, Haron and Jantan, 2006; Haron, Rahman and Hanid; Ghazali, 2010; Mohamad-Nor, Shafie and Wan-Hussin, 2010; Mohd-Sanusi, Mohd-Omar and Mohd-Nassir, 2015) but studies on internal control and internal control effectiveness within Malaysian cooperative organizations context are very limited. There are very few prior literatures that focus on the relationship of organizational culture, organizational structure and the effectiveness of internal control. Hence, this study will examine the influence of cooperative characteristics (organization culture, organization structure, environmental factors and organizational age) on effectiveness of internal control.

DEVELOPMENT OF COOPERATIVE IN MALAYSIA

In Malaysia, the cooperative movement started in the early 20th century (SKM, 2014). The idea of cooperatives was introduced to solve problems faced by rural farmers whom were oppressed by middle-men or business mediators under the "padi kunca" system and also, to solve problems of indebtedness by low wage workers and civil servants in the city. It was in the year 1922 when "Sharikat Bersama-sama Kerja Bantu Membantu" was established in Taiping, Perak and at the same time, the Cooperative Societies Enactment 1922 was enacted to supervised "sharikat kerjasama" of which is now known as "koperasi" (cooperatives). In the first year of movement, six rural credit cooperatives, three civil servants' cooperative and two cooperative stores were established (SKM, 2014).

The Malaysian Cooperative Societies Act 1993 (Act 502) defined a cooperative as an organization built for the purpose of improving its members' participation in economic and social activities. Owned by a group of individuals, a cooperative is formed based on the cooperative principles; open and voluntary membership, democratic management, limited return based on members' contributions, a fair distribution of profits, promotes education on cooperatives and active cooperation among registered cooperatives (SKM, 2014). Today, under the administration of the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) and regulation of the Malaysia Cooperative Societies Commission (MCSC), Malaysian cooperatives are regulated by the Cooperative Societies Act 1993 (Akta Koperasi 1993) (ACT 502) and the Malaysia Cooperative Societies Commission Act 2007 (Akta Suruhanjaya Koperasi Malaysia 2007) (SKM, 2014).

The National Cooperative Policy (NCP) was launched in 2002 with the aim of re-developing cooperatives. It was introduced to outline several strategies to be implemented in

order to enable cooperatives to play an active role in business development, along with public and private sectors. The authority structure of cooperatives was also improved in the NCP 2002-2010 by having cooperatives monitored under the Ministry of Domestic Trade, Co-Operatives & Consumerism and placed under the sole authority of Malaysian Cooperative Societies Commission (MCSC).

The Malaysian government regards cooperative as a platform for economic development (Othman, Mohamad and Abdullah, 2013). It is taken as a tool in helping to eliminate rural poverty and unequal income distribution, and enhancing development in both rural and urban areas. As a result of the local government transformation plan, cooperatives have emerged into efficient businesses from being only rural and small-sized, providing only basic services to their members (Mohamad, Othaman and Mohamad, 2013). The role of cooperative to uplift the economic development in rural and urban areas has been described under New Economic Model (NEM) whereby though on individual basis cooperative may seem small but when combined and pooled together, the collective power of cooperatives is very impressive.

ISSUES IN MALAYSIAN COOPERATIVE

Despite the growth in the terms of numbers of cooperative as recorded by MCSC and Malaysia's long rooted history of cooperative since the past 92 years (Raja-Yusof, Devi, Din, Nordi and Saari, 2002), issues such as absence of good governance and weak structure in some cooperatives typically characterized the cooperative movement in Malaysia. Subsequently, these problems have resulted in poor financial performance, cash flow and mismanagement and noncompliance with the Cooperative Societies Act 1993 and its related legislation in this sector (Bidin, 2007). These kinds of problems hindered the desired movement and development of cooperative as inspired by the government.

Issues such as absence of good corporate governance and lack of capital, along with weak structure, resulted in poor cash flow and financial performance, mismanagement and financial misappropriation in cooperatives (Bidin, 2007). In Malaysia, example of the infamous financial scandal involving cooperative is Deposit Taking Cooperative, ANGKASA, MOCCIS, Bank Rakyat and the Cooperative Central Bank. The scandal involves not a small amount and the lost incurred is reported at more than RM2billion. In a statement to the press, Royal Professor Ungku Aziz stress on his disappointment over the scandals and the long time it takes to settle the investigation.

The scandal is a result of ineffective internal control in the organization and creates urgency for regulators to implement better internal control in the organization. Nonetheless, up to date, it is still not a mandatory for cooperative to implement and to report on their internal control in their annual report.

INTERNAL CONTROL EFFECTIVENESS IN COOPERATIVE

Generally defined, internal controls are process employed by the board and management to prevent and mitigate fraud, warrant reliable financial reporting and stay in compliance with rules, law and regulations. From the board to lower level employees are responsible for the internal controls impacting their jurisdiction. Sponsoring Organizations of the Treadway Commission (COSO, 1992, p 1) defined internal control as "a process, effected by an entity"s Board of Directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories; effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations." Being a process, internal control is dynamic in nature, with constant changes as the organization's environment, internal and external, change, resulting to a rotation where, as past threats were mitigated, new risks will arise.

Internally, internal control helps organizations to ensure reliability of reports, such as financial reports, compliance with laws and regulations, encourage and promote operational

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efficiency and effectiveness, and most importantly help in reducing risks (COSO, 1992). Internal control also helps management to deal with external opportunities and threats such as the competitive environments, economic volatility and shifting in demands and supplies (COSO, 1992). The purpose of internal control is to reduce risk and error and enhance accountability as it provides a system of checks and balances, with a potential of reducing theft and fraud, and can help to identify potential areas of errors. In evaluating the effectiveness of internal control, although it is as per subjective judgment, COSO (1992) outlined that effectiveness is determined by meeting three categories of objectives of internal control; effective and efficient organizational operations, reliable reports are prepared and compliance with laws and regulations.

Generally, if the organization's internal control is free from material control weaknesses and reasonable assurance in achievement of its objectives is provided, internal control is deemed effective (Pfister, 2009). Effective internal control exists when board and management obtain reasonable assurance that achievement on efficiency and effectiveness of operation is gained and it is crucial for the management to be aware on to what level these achievements are earned (Pfister, 2009). In addition, board and the management are reasonably assured that internal financial reports and statements are reliably produced. All information in the financial reports needs to be carefully constructed and are free from material errors for it to be reliable. Finally, the management and board must have reasonable assurance that the organization as a whole have complied with laws and regulations pertaining the organizations' operations.

CONTINGENCY THEORY

The theoretical foundation of this study is premised on contingency theory. Donaldson (2001) defined contingency as "any variable that moderates the effect of organizational characteristics on organizational performance". Klaas (2001) outlined that organizational viability is dependent on different contingencies such as organizational structure, organizational climate, technology and culture. Thus, it explains how the contingency theory enables a researcher to originate systematically factors in predicting or explaining expected situations (Badara, 2013; Umanath, 2003). The main context of contingency theory is that the success of any management control initiative (e.g., internal control and internal control effectiveness) depends on the contingencies of the company.

The main context of contingency theory is that the success of any management control initiative (e.g., internal control and internal control effectiveness) depends on the contingencies of the company. Additionally, Hui and Fatt (2007) stated that two theories (industrial organization and resource based theory) discussed in the research argued that a good fit between a firm's internal characteristics and external forces is crucial to the effectiveness of a strategy. A good fit means to tailor controls to organizations' characteristics, to make it unique, contingent to each organizational characteristic and settings, as it will results in better effectiveness in control (Fisher, 1998; Jokipii, 2009, Ninlaphay Ussahawanitchakit and Boonlua., 2012). Ninlaphay et al. (2012) argued that organizational ability (each with different abilities) to adapt to internal control system in times of facing external or internal changes is crucial in determining whether the system fits the organization, and thus promotes its effectiveness.

A specific proposition of contingency theory is dependent variable and two or more independent variables' relationships are hypothesized and empirically tested (Drazin and Van de Ven, 1985; Badara, 2013). Organizational ability in adapting to internal control systems may be analyzed by empirically testing the relationship of organizational contingencies (contingency characteristics and organizational culture) and the effectiveness of the system. In this study, component of contingency theory such as organizational structure, environmental

factors and organizational culture will be utilized in explaining organizational contingencies which could influence the effectiveness of internal control in cooperative organizations.

RESEARCH HYPOTHESES

Organizational Structure

Organizational structure fairly affects elements in internal control, which directly affects effectiveness of internal control, and provides a base for the overall internal control system (Standards for Internal Control, New York State Government, 2007). Some of the line-up of organizational structure characteristics in an overview by Vroom (2002) are; standardization, differentiation and coordination, formalization, centralization and configuration.

Otley (1980) stated that a mechanistic structure (more centralized, vertically differentiated and formalized) will increase predictability of work behaviour by reducing variability, and thus may facilitate organizations' internal control. It was later found in the results that organizational structure has a statistically significant positive effect on internal control effectiveness. Erserim (2012) on the other hand found no significant relationship between centralization and managerial accounting practices but found formalization to have positive relationship with managerial accounting practices. Additionally, Jokipii (2009) found no significant results for organizational structure towards internal control and its perceived effectiveness. Thus, the following hypotheses are built.

H1a: There is a positive relationship between cooperative's organizational structure (centralization) and the effectiveness of internal control

H1b: There is a positive relationship between cooperative's organizational structure (formalization) and the effectiveness of internal control

Environmental Factors

Environment factors include forces outside organization that could potentially affect performance (Robbins, 1998). As all environmental elements (i.e., government regulations and competitors) combine and conspire, an environment which is unpredictable will be produced to a lesser or greater extent (Lashley and Lee-Ross, 2003). Lashley and Lee-Ross (2003) had also listed some popular techniques in analyzing environmental factors such as the SWOT analysis (strengths, weaknesses, opportunities, and threats), the PEST analysis (political, economic/environmental, social and technological factors) and mnemonics (all appropriate variables are considered).

Chenhall (2003) emphasized that external environment as a powerful contextual variable. Specific external risks may arise towards the industry of which the organization operates (AICPA, 2006); e.g., using technology in making sure of efficient organizational operation and political factors which may impact the organization (Gupta, 2013; Mahara, 2013), towards the effectiveness of internal control.

H2: There is a positive relationship between environmental factors and the effectiveness of internal control

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Organizational Culture

Organizational culture is a shared values, assumptions and beliefs that exist in the environment of an organization, which produces a behavioural norm in solving problems (Schein, 1990; Owens, 1987) and guides behaviours within the organization (Heris, 2014; Ahmad, 2012). Organizational culture influences behaviour and attitudes within an organization as it acts as a system of social control, and these values and beliefs which constructs culture, portrays organizational internal environment (Aycan, Kanugo & Sinha, 1999; MacIntosh & Doherty, 2010) making organizational culture an organizational contingency

Previous research findings found significant positive relationship between internal control, internal control effectiveness and organizational performance, and organizational culture (Aydin and Ceylan 2009; Pfister, 2009). Aydin and Ceylan (2009) state that organizational commitment and employee satisfaction will aid in organizational effectiveness; e.g., employee satisfaction will increase involvement in the organization and thus, facilitates towards organizational effectiveness.

Although reports on direct positive relationships between organizational culture and internal control effectiveness are fairly limited, large significant findings on organizational culture positive relationships with internal control and organizational performance have made the researcher's point in discovering relationship between organizational culture and internal control effectiveness relevant. Thus, the following hypothesis is constructed.

H3: There is a positive relationship between organizational culture and the effectiveness of internal control

RESEARCH METHOD

Design and Research Instrument

This paper employs quantitative method by using questionnaire adopted from prior literature in internal control effectiveness by Jokipii (2009). Questions were also adopted from prior literature on organizational culture by Aftab, Rana and Sarwar (2012). The questionnaires were prepared in booklets and were bilingual, in English and Bahasa Malaysia separately, and were distributed in both languages. The questionnaire was designed in four (4) sections. Section A covered demographic information of respondents which were their gender, age and position in the cooperative organization. Section B required respondents to answer on the characteristics of cooperatives namely the cooperatives' operation years, organizational structure for both elements of centralization and formalization, and environmental factors.

Section C focused on organizational culture of the organization. The section consists of thirty-one statements which explained on four dimensions under organizational culture. As previously mentioned, these dimensions from Denison's Framework of Organizational Culture comprised of four traits; involvement, consistency, adaptability and mission. Lastly, Section D consisted of statements that represent the effectiveness of internal control in the organization. It was elaborated under three elements which were operational efficiency and effectiveness, reliability of information and also compliance with laws and regulations.

Every section, except the demographic section, operational years and centralization (organizational structure) section, were built in four-point Likert Scale of which, the respondents needed to select their most appropriate responses on each statement; whether they strongly agree (SA), agree (A), disagree (D) or strongly disagree (SD). A set of questionnaires is included in the Appendix section.

Participants and Procedures

Targeted respondents for the study is the management of cooperatives, comprised of cooperatives' Board Members (Ahli Lembaga Koperasi), executive and non-executives as the responsibility of internal control lies on each individual in the organization (Pfister, 2009). Questionnaires were distributed by mail to the selected samples, which are cooperatives listed in the Top 100 Cooperatives for the year 2014. Mails were addressed to respected cooperatives as it is the most effective way to reach the respondents and to keep them in their organizations' atmosphere in an attempt to receive more valid responses in answering the questions. Out of 100 distributed questionnaires, 56 were returned back by the respondent. The respond rate is equal to 56%.

RESULT OF THE ANALYSIS

Respondent Demographic

Table 1: Descriptive Analysis of the Participants' Demographic Factors

No.	Item		Overall N = 56	
			Frequency	Percent
1	Gender	Male	25	44.6
		Female	31	55.4
2	Age Distribution	up to 35 years old	19	33.9
		36 to 50 years old	25	44.6
		51 to 65 years old	10	17.9
		66 years old and above	2	3.6
3	Position	Board Member (ALK)	9	16.1
		Executive	33	58.9
		Non-executive	14	25.0
4	Cooperative Age Distribution	up to 35 years	25	44.6
		36 to 70 years	20	35.7
		71 years and above	11	19.6
5	Cooperative Region	Pahang	14	25.0
		Wilayah Persekutuan Kuala Lumpur	13	23.2
		Johor	10	17.86
		Others	19	33.94
6	Cooperative Functions	Credit	23	41.1
		Consumer	14	25.0

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No.	Item		Overall N = 56	
			Frequency	Percent
		Agriculture	7	12.5
		Others	12	21.4
7	Total Assets of Cooperative – Average		RM 53,848,723	

A total of 56 responses were received for analysis. Distribution of gender among respondents shows a total of 25 respondents were male and 31 respondents were female, which accumulated to 44.6 percent and 55.4 percent respectively. Despite indicating a balance gender distribution in cooperative organizations' management, a small gap in percentage between genders shows that there was equality in willingness to support the study by responding to the questionnaires. Age distributions shows that most respondents were within the age of 36 to 50 years old at a rate of 44.6 percent. The second highest were respondents in the age up to 35 years old at 33.9 percent. Additionally, respondents' positions were assessed. The highest response rate was received from executives within cooperative organizations, which accumulated to 58.93 percent of total responses.

As also shown in the table, 44.6 percent of responses came from cooperatives with age up to 35 years of establishments, which recorded as the highest percentage compared to 35.7 percent from 36 to 70 years of establishments and 19.6 percent from cooperatives with establishment years of 71 years and above. Most responses came from cooperatives in Pahang, with 25 percent of total responses. The second and third highest responds came from cooperatives in Wilayah Persekutuan Kuala Lumpur and Johor, at 23.2 percent and 17.9 percent respectively, while another 33.9 percent came from other regions or states. Credit cooperatives were recorded the highest response received among cooperative functions with 41.1 percent of total responses. Consumer cooperatives and agriculture cooperatives were recorded at 25 percent and 12.5 percent respectively, while 21.4 percent came from other cooperative functions. Moreover, average total assets from all responses were recorded at RM 53,848,723.

Test of Hypotheses

In order to determine the relationship between the independent and dependent variables, multiple regression analysis was used. Hypothesis 1a examines whether there is a significant positive relationship between cooperative's organizational structure (centralization) and the effectiveness of internal control. The expectation is, the more centralized organizational structure will improve the effectiveness of internal control. Based on regression analysis, the result in Table 2 shows that there is no significant influence between centralized organizational structure and effectiveness of internal control (t= -.310, p= .758). Even the direction of relationship also is negative, thus Hypothesis 1a is not supported. For Hypotheses 1b, it is claimed that more formal organizational structure would eventually improve the effectiveness of internal control. Based on result presented in Table 2, it is shown that there is a significant positive relationship between formalize corporate structure and effectiveness of internal control (t=1.445, p=.155). Hence, Hypothesis 1b is supported. On the other hand, Hypothesis 2 is not supported as the result in Table 2 shows that there is a no significant positive relationship between environmental factors and effectiveness of internal control (t=.464, p=.644).

Meanwhile, Hypothesis 3 examines whether the organizational culture will significantly influence the effectiveness of internal control. It was expected that an increase in the organizational culture will significantly improve the effectiveness of internal control. Based on result in Table 2, the proposition of Hypothesis 3 is supported with a t-value equal to 2.442 and a p-value equal to.018.

With an R2 value of 0.400, cooperative age, formalization, environmental factors and organizational culture shares 40.1 percent variance with internal control effectiveness. This indicates that the variation in internal control effectiveness can be explained by these variables. From the results in can be concluded that the model can significantly predict the dependent variable, internal control effectiveness, at $p<0.001$ with F-ratio 6.680.

Table 2: Multiple Linear Regression

		B	Std. Error	t	Sig.
(Constant)		1.688	.381	4.436***	.000***
Centralization Structure)	(Organizational	-.014	.044	-.310	.758
Formalization Structure)	(Organizational	.099	.069	1.445*	.155*
Environmental Factors		.049	.106	.464	.644
Organizational Culture		.298	.122	2.442**	.018**
Cooperative Age		-.003	.017	-2.011**	.050**
R			= .633[a]		
R^2			= .400		
Adjusted R^2			= .341		
P			= .000[a]		

a. Predictors: (Constant), Organizational Culture, Cooperative Age, Formalization, Centralization, Environmental Factors

*Notes: Significance is based on two-tailed test, *** represent significant at .001 level, ** represent significant at .05 level and * represents significant at .10 level*

DISCUSSION AND CONCLUSION

The practice of internal control within credit cooperatives was not fully implemented although a high level of awareness was recorded in the responds. This was due to the cooperative managements, who felt unconfident that there would be enough funds allocated for its implementation and to acquire competent people to assist the implementation of internal control. Additionally, it was found that compared to non-performing cooperatives, performed cooperatives have larger time allocation for control activities, which also indicates the importance of internal control effectiveness for cooperatives' performance. All of this have raised questions on cooperatives' ability to implement effective internal control.

In order to determine whether the system (internal control system) fits the organization to promote effectiveness, organizations need to be able to adapt to the system.The needs for an effective internal control may vary depending on each organizational context (Jokipii, 2009).

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Standardized internal control such as COSO and COCO also mentioned that internal control effectiveness depends on organizational characteristics. The effectiveness of internal control is tested to be influenced by organizational characteristics (organizational structure, organizational culture) and also environmental factors. This could provide an indication that effectiveness of internal control relies heavily on these characteristics. Both organization structures in terms of formalization and organizational culture influence the effectiveness of internal control. This indicates that a more formal organizational structure such as having formal written policies and procedures will improve the effectiveness of internal control.

It works, maybe in directing and informing the lower level employees formally on the do's and the dont's that would direct the organization towards achieving more effective internal control. Within time, these formal organizational structures which encourage the tone from the top would provide unique capabilities for cooperative to remain competitive in the market. On the other hand, the results also indicate that all four dimensions of organizational culture have impact on cooperatives' internal control effectiveness. For example, if cooperatives provide a culture of involvement, which makes the employees feel like they are a part of the team and that they can see the importance of their work in achieving organizational goals, cooperatives could improve their internal control effectiveness. Involvement serves as an important dimension in explaining commitment and capability development by employees (Ahmad, 2012). Similar goes to consistency as it is mentioned that highly consistent culture will lead organizations to be effective (Davenport, 1993). Adaptability culture and mission, culture are also important within cooperatives in order to improve internal control effectiveness.

A major limitation to this study is the low response rate from the questionnaire survey via mail. For this, future studies may consider conducting interviews as it may provide better understanding on current views and practices of internal control and internal control effectiveness within cooperative organizations. Interviews may also provide deeper perceptions of cooperative organizations' contingency characteristics, organizational culture and internal control effectiveness. Though previous studies of the relationship between these variables were done primarily on profit organizations, when tested in the context of cooperative, result from this study could provide an avenue for more exploration in future on what factors that can influence the effectiveness of internal control. Additionally, the usage of four-point Likert scale in this study might cause normality problems and it is recommended for future studies to expand the scale. Due to data limitation, exploration on types of cooperative which place great concern on internal control effectiveness cannot be done, thus future studies may expand research sample and obtain more information so that comparison between each cooperative function could be done. Despite the limitations, it is hoped that the study would enhance the understanding of internal control and internal control effectiveness literatures, particularly for cooperatives in Malaysia.

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REFERENCES

Aftab, H., Rana, T. and Sarwar, A. (2012) An investigation of the relationship between organizational culture and the employee's role based performance: Evidence from the banking sector. *International Journal of Business and Commerce*, 2(4), 01-13.

Ahmad, M. S. (2012) Impact of organizational culture on performance management practices in Pakistan. *Business Intelligence Journal,* 5(1), 50-55.

Aycan, Z., Kanungo, R.N. and Sinha, J.B.P. (1999) Organizational culture and human resource management practices: the model of culture fit. *Journal of Cross- Cultural Psychology*, 30(4), 501-526.

Aydin, B. and Ceylan, A. (2008) The employee satisfaction in metalworking manufacturing: How do organizational culture and organizational learning capacity jointly affect it?. *Journal of industrial engineering and management*, 1(2), 143-168.

Badara, M. S. (2013) Impact of the effective internal control system on the internal audit effectiveness at local government level. *Journal of Social and Developement Sciences,* 4(10), 16-23.

Bidin, Y. H. (2007) Positioning knowledge management as key success factor in the growth of cooperatives in malaysia. *Asian Academy of Management Journal*, 12(1), 69-82.

Borzaga C. et al. (2014) Europe in Transition: The Role of Social Cooperatives and Social Enterprises. [Online]. Euricse Working Papers, 69|14. Avalable from: http://www.euricse.eu/wp-content/uploads/2015/03/1405514708_n2553.pdf [Accessed 12 October 2017].

Chenhall, R. (2003) Management control systems design with in its organizational context: Findings from contingency-based research and directions for the future. *Accounting, Organizations and Society,* 28(2–3), 127–168.

Committee of Sponsoring Organizations of the Treadway Commission (COSO), 1992. [Online]. Available from: https://www.coso.org/Pages/default.aspx [Accessed 12 October 2017].

Davenport, T. (1993) *Process innovation: Reengineering work through information technology*. Boston, MA: Harvard Business School Press.

Donaldson, L. (2001) *The contingency theory of organizations*. USA: Sage Publications.

Drazin, R. and Van de Ven, A. H. (1985) Alternative forms of fit in contingency Theory. *Administrative Science Quarterly,* 30(4), 514-539.

Fadzil, F., Haron, H. and Jantan, M. (2006) Internal auditing practices and internal control system. *Managerial Auditing Journal,* 20(8), 844–866.

Fisher, J. (1998) Contingency theory, management control systems and firm outcomes: Past results and future directions. *Behavioral Research in Accounting,* 10, 47–64.

Gupta, A. (2013) Environment & PEST analysis: An approach to external business environment. *International Journal of Modern Social Sciences,* 2(1), 34-43.

Hagen, H. (2004) ILO Recommendation 193 in practice – Co-operative values and principles in national legislation. Paper for ILO/ICA conference April 2004. ILO, Geneva.

Hansmann, H. (1996) *The Ownership of Enterprise.* Cambridge, MA: Harvard University Press

Heris, M. S. (2014) Preventing Effects of organizational culture on organizational effectiveness in Islamic Azad universities of Nortwest of Iran. *Indian Journal of Fundamental and Applied Life Sciences*, 4(S3), 250-256.

Hui, L.T. and Fatt, Q.K. (2007) Strategic organizational conditions for risks reduction and earnings management: A combined strategy and auditing paradigm. *Accounting Forum* 31(2), 179–201.

Internal Control-an Integrated Framework. COSO. (1994) *Committee of Sponsoring Organization of Treadway Commission. Internal control integrated framework*. New York: AICPA.

ISBN: 978-1-911185-43-7 (Online)

Jokipii, A. (2009) Determinants and consequences of internal control in firms: A contingency theory based analysis. *Journal of Management & Governance*, 14(2), 115-144.

Klaas, P. (2001) *Towards a concept of dynamis fit in contingency theory*. Non published working paper. Odense, Denmark: University of Southern Denmark.

Lashley, C. and Lee-Ross, D. (2003). *Organization behaviour for leisure services*. Butterworth-Heinemann, Oxford ; Boston

Leviten-Reid, C. and Fairbairn, B. (2011) Multi-stakeholder Governance in Cooperative Organizations: Toward a New Framework for Research? *Canadian Journal of Nonprofit and Social Economy Research*,2(2), 25-36.

MacIntosh, E.W. and Doherty, A. (2010) The influence of organizational culture on job satisfaction and intention to leave. *Sport Management Review*, 13(2) 106-117.

Mahara, T. (2013) PEST-Benefit/Threat Analysis for selection of ERP in Cloud for SMEs. *Asian Journal of Management Research*, 3(2), 365-373.

Mohamad, M., Othman, I. W. and Mohamed, A. (2013) Accountability issues and challenges: the scenario of Malaysian Cooperative Movement. *International Scholarly and Scientific Research & Innovation, 7*(6), 665-670.

Mohamad-Nor, M. N., Shafie, R. and Wan-Hussin, W. N. (2010) Corporate governance and audit report lag in Malaysia. *Asian Academy of Management Journal of Accounting and Finance*, 6(2), 57-84.

Mohd-Sanusi, Z. et al. (2015) Effects of internal controls, fraud motives and experience in assessing likelihood of fraud risk. *Journal of Economics, Business and Management*, 3(2), 194-200)

New York (State) Office of the State Comptroller, & DiNapoli, T. P. (2007) *Standards for Internal Control in New York State Government*. State Comptroller.

Ninlaphay, S., Ussahawanitchakit, P. and Boonlua, S. (2012) Internal control system effectiveness and ongoing firm sustainability: Evidence from financial businesses in Thailand. *Journal of International Finance & Economics*, 12(4), 61-84.

Othman, I. W., Mohamad, M. and Abdullah, A. (2013) Cooperative movements in Malaysia: The issue of governance. *World Academy of Science, Engineering and Technology*, 7(6).

Otley, D. T. (1980) The contingency theory of management accounting: Acheivement and prognosis. *Accounting, Organization and Society*, 3(4), 413-428.

Owens, R. (1987) *Organizational Behavior in Education*. Englewood Cliffs, NJ: Prentice-Hall.

Pfister, J. A. (2009) *Managing Organizational Culture for Effective Internal Control*. Physica-Verlag HD, Springer-Verlaf Berlin Heidelberg.

Raja-Yusof, R. M. et al. (2002) *Ciri-ciri keusahawanan dan amalan pengurusan di kalangan pengurus-pengurus koperasi di Malaysia*. Monograf Penyelidikan , Maktab Kerjasama Malaysia.

Robbins, S. P. (1998) *Organizational behaviour*. 8th (ed)., US: McGraw-Hill Education.

Schein, E. (1990*) Organizational Culture and Leadership.* San Francisco: Jossey-Bass.

Suruhanjaya Koperasi Malaysia - Dasar Koperasi Negara [2011-2020] (SKM). (n.d.). [Online]. *Portal Rasmi Suruhanjaya Koperasi Malaysia - Dasar Koperasi Negara* [2011-2020]. Available from: http://www.skm.gov.my/Gerakan-Koperasi/Dasar-Koperasi-Negara-2011-2020.aspx [Accessed 16 October 2017].

Suruhanjaya Koperasi Malaysia - Pengenalan. (n.d.) (SKM). [Online]. Available from: http://www.skm.gov.my/Gerakan-Koperasi/Pengenalan.aspx [Accessed 16 October 2017].

Umanath, N. S. (2003) The concept of contingency beyond It depends illustrations from IS research stream. *Information & Management*, 40, 551–562.

UN (2003) Co-operatives in social development. Report of the Secretary General A/58/159 United Nations General Assembly.

Vroom, G. (2006) Organizational Design and the Intensity of Rivalry. *Management Science*, 52(11), 1689-1702

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EVALUATING CONTEMPORARY POLICY MEASURES ON SUSTAINABLE EQUITABLE TENURIAL RIGHTS IN NIGERIA

NELSON MADUMERE[1]

ABSTRACT

Developments and policy measures aimed at enthroning equitable and sustainable tenurial regimes within the heterogenous and customarily patrilineal Nigerian society have often centred on the adoption of statutory legal propositions and judicial interventions. These interventions often entail complete reliance on the "repugnancy clause" mechanism for the eradication of perceived customary practices whose provisions and operations are perceived to be contrary to the principles of natural justice, equity and good conscience. However, in view of the limitations inherent in legal approaches to customary reformation, and the inability of most preferred reform measures- like land titling and registration- to guarantee sustainable tenure security and equitable land regimes across many African communities, there arises an urgent need for the adoption of other proactive, culture sensitive and sustainable approaches to complement the statutory provisions and judicial proscriptions.

Keywords: repugnancy clause; gender equality; reforms; property inheritance

THE NATURE OF THE NIGERIAN LAND TENURE AND TENURE SECURITY

Land remains the major source of livelihood for a large portion of Nigerian population. The heterogenous nature of Nigerian society has made it practicably difficult, if not impossible, for the adoption of a centralised system of land governance. This gave rise to the emergence of multiplicities of land regimes in reflection of the pluralistic nature of Nigerian legal system. Unfortunately, most of these land tenure systems, particularly customary tenurial rights, has elicited public criticisms and outcry owing to their gendered and discriminatory attributes (Onuoha, 2008, p1-30). Inheritance right is the most common way of property acquisition in Nigerian. It entails the transfer of the deceased's bundle of rights and obligations to their heirs or successors in line with the deceased written wills (testate cases) or the deceased personal law (intestate cases). In Nigeria, personal law is either the customary law of the *propositus* or Islamic law, see *Tapa v. Kuka* (1945, 18) and *Ghamson v. Wobill* (1947, 12).

Neither the overwhelming consensus on the implications and inherent socio-economic benefits associated with robust equitable and secure land rights (Gberu and Girmachew, 2017, p 1), nor the existence of fundamental statutory provisions against all forms of discrimination has been able to curb the menace of these obnoxious tenurial principles. Section 42(1 &2) of the 1999 constitution of the Federal Republic of Nigeria provides that no Nigerian of any background, gender, religion or political opinion shall be made to suffer any form of disabilities or restrictions on the grounds of their communal affiliation, ethnic background, places of origin, gender, religious belief or political affiliations. The concept of equitable and secure land rights also forms part of the main objectives of the Nigerian Land Use Act of 1978. In addition, Nigeria is also co-signatory to many international instruments on Human Rights, tenurial equity and security, some of which has been ratified and domesticated by the Nigerian parliaments in accordance with the provisions of section 12(1) of the 1999 Nigerian constitution. However, the existence of these legal documents has been unable to guarantee equitable and secure tenurial rights in patrilineal Nigerian communities where customary practices that dehumanise

[1] School of Business and Law, University of East London. E-mail: - nellyking406@yahoo.com

women and deny them all rights of property inheritance still holds way. In recent time, Nigerian courts have risen to the challenges by clamping down on various discriminatory customary tenurial rights that discriminate and subjugate women's interests. Thus, in *Mojekwu v. Mojekwu* (2004, 11), Justice Niki Tobi of the then Appeal Court ruled against *Nnewi* customary right of inheritance that deny women's right of property inheritance as unconstitutional and repugnant to natural justice, equity and good conscience. The Nigerian Supreme court in *Ukeje & Ors v. Ukeje* (2014, 149) and *Anekwe & Ors v. Nweke* (2014, 183) ruled against two elements of the discriminatory *Oli-ekpe* customary practice that prevent female children from inheriting from their family assets, and the customary practice that disinherits both barren women and widows without male children respectively.

Meanwhile, before the above bold and commendable proscriptions against discriminatory customary practices, majority of the rulings by the Supreme Court of Nigeria on matters relating to women's property rights had always been antithetic to social equality arguments and women's emancipation ideology (*Sogunro-Davies v. Sogunro & Ors* (1929, 79); *Nwugege v. Adigwe* (1934, 134); *Suberu v. Sunmonu* (1957, 30-35); Yusuf v. Dada (1990, 657 & 669); *Akinnubi v. Akinnubi* (1997, 288); *Nezianya v. Okagbue* (1963, 277), and *Nzekwu v. Nzekwu* (1988, 581). Various factors readily come to mind as to the probable reasons for the Supreme Court's recent shift in policy context. These factors are worthy of examination to determine the level of correlation between them and the Supreme Court's recent positions. Attempts are hereafter made towards examining the contexts of the assertions, and to what extent did the influence of these factors precipitate the paradigm shift within Nigerian judicial landscape.

The first factor that readily comes to mind is the promotion of the "activist justices" from the Appeal Court to the Supreme Court. These are Appeal Court and Supreme Court justices whose pronouncements or concurring statements had led to the proscription of several discriminatory customary practices in Nigeria. Among the celebrated land rights and equality cases deliberated upon by the Appeal Court of Nigeria are *Mojekwu v. Mojekwu* (1997); *Mojekwu v. Ejikeme* (2000); *Ukeje v. Ukeje* (2001); *Uke v. Iro* (2001). The panel of Appeal Court justices that deliberated on the celebrated case of *Mojekwu v. Mojekwu* are Niki Tobi JCA, Ejiwunmi JCA and Ubaezeonu JCA (as they were). In *Ukeje v. Ukeje*, the panel of justices consisted of Oguntade JCA, Galadima JCA and Aderemi JCA. *Uke v. Iro* was deliberated upon by Justices Pats-Acholonu JCA, Akpiroro JCA and Ikongbeh JCA, while the panel of justices in the case of *Mojekwu v. Ejikeme* consisted of Justice Niki Tobi JCA, Justice Olagunju JCA and Justice Fabiyi JCA. Out of all the justices mentioned above, only justices Olagunju, Ubaezeonu, Akpiroroh and Ikongbeh were unable to make it to the Supreme Court as the rest were eventually elevated to serve as justices of the Supreme Court of Nigeria (Aigbovo and Ewere, 2015, p20). Even justice Inyang Okoro, one of the three Appeal Court justices that deliberated on the *Anekwe v. Nweke* case has also been elevated to the Supreme Court (Ibid). It is obvious from the foregoing that the elevation of these crops of Appeal court activist justices to the Supreme Court played a significant role in changing the Supreme Court's unfavourable policy stance towards women's tenurial rights and freedom from draconic customary practices in Nigeria. However, some scholars have argued otherwise (Omoregie, 2005, p146; Aigbovo and Ewere, 2015, p20-21). To these scholars, there is no clear correlation between the elevations of these Appeal court activist-justices and the Supreme Court's policy shift. Their position is premised on the claim that some of the activist justices who had demonstrated clear commitments towards the eradication of discriminatory customary land rules against women while in Appeal Court could not maintain same position when they were eventually elevated to the Supreme Court, the reason being either that they were eventually trapped in the Supreme Court's web of conservatism or were not given the needed opportunity to make their marks (Ibid).

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It would be difficult to come to terms with any cogent reason(s) why an activist-justice who had assiduously stood against socio-cultural, statutory and religious injustices while in the lower courts could suddenly jettison all traces of decades-long activist propositions when finally elevated and presented with an opportunity to put a seal of finality against the continued existence of such discriminatory practices. It is a fact that Justice Pats-Acholonu, one of the Appeal Court's activist justices, was eventually among the Supreme Court justices that overturned justice Niki Tobi (JCA)'s audacious pronouncement against discriminatory customary rules in *Mojekwu v. Mojekwu* (1997, 288). However, the matter should not be analysed out of context.

The primary issue under contention in the *Mojekwu v Iwuchukwu* (2004, 11) case was on whether a court has right to raise a point *suo motu* and proceed to give judgements without first hearing the parties, and not on the validity or otherwise of the customary rights of inheritance of the Igbos. This matter is settled in law that though courts has the power to *suo motu* raise issues that none of the parties to a case before it had raised. However, it lacks the jurisdiction to proceed and determine the case or any matter thereof on the grounds of the issues it has raised *suo motu* without first hearing the parties or giving them sufficient opportunity to address the issues so raised. It is the duty of the court to invite the parties to address the raised issues before proceeding to determine the case in question or any matter therein. Anything short of this amounts to procedural error, violation of the parties' right to fair hearing and miscarriage of justice, see *Oke v. Nwizi*, (2013, 21252). Earlier in *Obumseli v. Uwakwe* (2009, 486), the Supreme Court established that "on no occasion should a court of law raise a point *suo motu* no matter how clear it may appear to be and proceed to resolve it one way or the other without hearing the parties. If it does so, it will be in breach of the parties' right to fair hearing. This point of law was also restated in *Dalek Nigeria Ltd v. Oil mineral Producing Areas Development Commission (OMPADEC)* (2007, 305), *ODD Ltd v. Joseph Odo & Ors* (2010, 486) and in *Ebolor v. Osayande* (1992, 217) where Nnaemeka-Agu JSC stated that

> ...our adversary system does not permit a court to dig into the records and fish out issues, no matter how patently obvious, and without hearing the parties, use it to decide an issue in controversy between the parties to the appeal. It runs counter to the impartial status and stance expected of a judge in the system". Therefore, "it is firmly settled in a plethora of decided authorities [in Nigeria] that any issue or issues which is or are not formulated from a ground of appeal, is incompetent and must be ignored or discountenanced and struck out ().

It is quite unfortunate that various legal minds have joined forces with the press and some human rights activists in their simplistic analysis of *Mojekwu v Iwuchukwu* case (Aigbovo and Ewere (2015, p 22), as they believe that the Supreme Court's position in this case is informed more by atavistic sentiments rather than the unambiguous provisions of the non-discriminatory clause as enshrine in our statutes (Omoregie, 2005, p146). Though one ought to, and can obviously relate to the sentiments that informed such thinking. There is no doubt over the undesirability of the gendered discriminatory elements inherent in the *Oli-ekpe* customary practice of Nnewi people, and the dangers such portends to our society. However, we must also learn to accept the fact that not all means are legally acceptable. Binding judicial pronouncements must be rooted in established principles of rule of law. Thus, there must be a cause upon which judicial pronouncements are founded. It is a dangerous development for the legal community and the larger society to accommodate violation and abuse of judicial processes on the grounds that it overtly or covertly yielded positive results. Thus, it is wrong for us to vilify the panel of justices on the grounds of their position in the said matter without putting into consideration the unsavoury precedence such a ruling would establish within our

legal system if left to stand. These analysts and jurists ought to be in the knowing that allowing such would set a wrong precedence and leave an indelible scar on the sanctity of Nigerian legal jurisprudence.

Another factor worth considering is the unprecedented emergence of women jurists in the Supreme Court bench, and their increasing assumption of positions of authorities and responsibilities within the Nigerian judicial system. Justice Mariam Aloma Muktar was on 8thJune 2005 elevated to the supreme court bench from the appeal court, thereby making history as the first ever woman justice to be elevated to the supreme court of Nigeria. She subsequently broke another jinx when she emerged as the 13th Chief Justice of Nigeria in July 2012; making her also the first woman to ascend to the position of the chief justice of the Nigerian Supreme Court (Taire, 2012). Justice Zainab Adamu Bulkachuwa who was sworn-in by Justice Mariam Aloma Muktar on 17th of April 2014 as the sixth president of the Appeal court also made history as the first female Appeal Court president in Nigeria (Tsan and Olasanmi, *2014)*. Other women who eventually made it to the Supreme Court after the Justice Mariam Aloma Muktar's unprecedented achievement are Justice Olufunlola Adekeye, Justice Mary Peter-Odili, Justice Clara Bata Ogunbiyi and Justice Kudirat Kereke-Ekun (Bamgboye 2016). As the chief justice of the federation, Justice Mariam Aloma Muktar was responsible for empanelling the justices that would hear any case before the Supreme Court. Thus, it is not surprising that female Justices featured prominently in the recent Supreme Court's rulings that outlawed Igbo customary inheritance practices that discriminate against women. Justice Ogunbiyi, was a member of the panel of justices that heard the appeal in the Ukeje case in which she concurred with the lead judgement. She was also present and particularly wrote the lead judgement in the Anekwe case. Therefore, it is obvious from the foregoing that the elevation of female justices to the Supreme Court and their assumption of positions of authorities play significant role in sharpening the new found activist zeal of the Nigerian Supreme Court.

RETHINKING THE NEW DAWN IN WOMEN'S LAND RIGHTS IN NIGERIA

The elemental attributes of any comprehensive legal system and its success is highly dependent on the existence of, and the recognition of enforceable substantive rights for the people, establishment of robust procedural rights mechanism that aid claims and redress, as well as the availability of robust, functional, transparent, accountable and independent institutions for the enforcement of both the substantive and procedural rights. Lack of strong institutions particularly has been identified as one major constraint militating against the effectiveness of all regulatory and reformatory policies of the Nigerian state, and indeed that of various other African states. This fact was elucidated by President Barack Obama in his speech to the Ghanaian parliaments on the 11th of July 2009 at the end of which he opined that "Africa doesn't need strongmen, it needs strong institutions" (VOA., 2009, 23). It is worthy to add at this point that beyond the clamour for strong institutions lay the need for serious commitments and decisive resolutions on the side of stakeholders to stand up against the beneficiaries of the old order who would obviously oppose any reform measures that threaten the status quo for their personal aggrandizement.

The recent Supreme Court's verdicts against discriminatory customary inheritance rules in Nigeria are highly commendable. Expectations are high in various quarters that this new development would significantly open a new vista into the drive for women emancipation and poverty alleviation within the rural communities across Nigeria. However, to others, it only portends a glimmer of hope at the end of the long tunnel of generational depravity and subjugations against Nigerian women all in the name of customary norms. There obviously exist palpable scepticisms over the successful implementation and sustenance of the judicial propositions. These misgivings arose because the recent paradigm shift was not precipitated by reforms, rather it came as a result of the goodwill of the current individual personalities in

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positions of responsibilities who took it upon themselves to act in ways that would be beneficial to the state and the general public. There are concerns on what becomes of the Supreme Court's new found activist zeal and women's land rights in Nigeria when the present crop of Justices with proven activist credentials and "good individuals" seize to be in their current positions of authority and responsibilities. This brings to the fore the concerns over the Supreme Court either declaring that these judgements were given *per-incuriam* or delivering conflicting verdicts on this single point of law in time to come.

It is not unheard of for the Supreme Court of Nigeria to give a conflicting decision on same question of law (Maduka (n.d); p 23-27) or completely overruling its earlier decision as it is not bound by its previous decisions, see *Odi v. Osafile* (1985, 34-35). Historically the legal jurisprudence contains quite many cases where Nigerian Supreme Court overruled its earlier decisions. In *Amudipe v. Arijodi* (1978, 128), the Supreme Court overruled its earlier decision in *Babajide v. Aisa* (1966, 254); in *Oduola v. Coker* (1981, 197), it overruled its position in *Mobile Oil Ltd. V. Abolade Coker* (1975, 175). Supreme Court's decision in *B. P. Co Ltd v. Jammal Engineering Co Nig. Ltd* (1974, 107) was also overruled in *Bucknor- Maclean v. Inlaks Ltd* (1980); in *Egboghenome v. State* (1993, 383), Supreme Court overruled its earlier decision in *Oladejo v. State* (1993) and Asanya v. State (1991, 422); also in *Adisa v. Oyinwola* (2000, 116), it overruled *Oyeniran v. Egbetola* (1997, 122). It is obvious from the foregoing that the present Supreme Court's positive pronouncements against discriminatory customary rules in Nigeria are not iron cast. They can be overruled by same Supreme Court should they see reasons to, and that obviously should be enough source for concern to all stakeholders. Hence, to enhance their long-term sustainability, it becomes essential that all states positive developments become structured and institutionalised in ways that would enable them to outlast the founding actors. This should be the core of every sustainable developmental goal. Unfortunately, the reverse is the case in Nigeria as plethora of governmental developmental strides often dies at the exit of the founding actors. The two case studies described hereafter aptly capture the above analogy.

The first was the achievements of the National Agency for Food and Drug Administration and Control (NAFDAC) under the leadership of Dora Akunyili- The Director General of NAFDAC between 2001- 2007, and former Nigerian Minister of Information between 2008-2010. Prior to her appointment as the Director General of NAFDAC, the food and drug regulatory environment in Nigeria was devoid of clear cut institutionalised operational structure, leading to avoidable operational laxity, chaos and confusions. Decision making was highly subjective, corruption was ripe and there was poor understanding of the roles and responsibilities of the members of staff which gave rise to ineptitude and inefficiency within the organisation (Akunyili, 2012, p 223). At her assumption of office as the Director General, Dora Akunyili introduced new operational guidelines and functional standard operating procedures to ensure transparency and uniformity in the performance of NAFDAC's regulatory functions. The sweeping restructuring and re-organisation of NAFDAC under Dora Akunyili yielded instantaneous results that attracted unprecedented recognitions both locally and internationally as agencies, regulatory bodies within and outside Nigeria, and many international organizations at various times within that period embarked on study tours to NAFDAC in an attempt to learn from the successes recorded by NAFDAC in their fight against counterfeit medicine and other substandard sensitive health products (Akunyili, 2015, p251-266). Organizations like Global alliance for Improved Nutrition (GAIN) and Fund Project for Vitamin a Fortification chose NAFDAC as their executing agency in Nigeria.

Despite the weaknesses and contradictions inherent in the available legal framework for the regulation of the manufacturing, importation, distribution and sales of pharmaceutical

products in Nigeria, hence creating lacunas through which offenders circumvent the law (Erhun, Babalola and Erhun, 2001, p24), Dora Akunyili's effective and pragmatic leadership revolutionised the sector and brought about unprecedented improvements in the sector. The results were visible as the volume of counterfeit medicine in circulation in Nigeria dropped from 41% in 2001 to 16.7% in 2006; the number of unregistered and unregulated medicines in circulation dropped from 68% in 2002 to 19% in 2006 (Akunyili, 2015, p251-253). As of June 2006, NAFDAC has secured a total of 45 convictions against counterfeiters with 56 other cases pending in various courts in Nigeria (WHO, 2006, p9). NAFDAC however became the cynosure of other international regulatory bodies across African continent as various organisations made frantic efforts to emulate NAFDAC's operational strategies. For example, The Drug Regulatory Authorities of Southern Sudan embarked on a working tour of NAFDAC in 2006 to understudy the reasons for the successes in their fight against fake and substandard medicine in Nigeria. Also, the West African Regional Programme for Health (WARPH/PRSAO) organised a study tour of NAFDAC for all the Medicines Regulatory Authorities in West Africa with the objective of learning from the achievements of NAFDAC; The Ugandan National Drug Agency (NDA) visited NAFDAC between 3rd and 4th of August 2007 with the sole aim of also learning from the reform measures that has brought so much positive results in Nigeria. Same goes for the East, Central and South African Programme (ECSA) (Akunyili, 2012, p251-266).

However, things went from bad to worst at the end of Dora Akunyili's tenure as the Director General of NAFDAC. The inability of the Nigerian government to institutionalise the reform measures and operational strategies developed under Dora Akunyili led to the collapse of the robust regulatory capabilities of NAFDAC at the end of her tenure. The present day NAFDAC is more like a revenue generating agency than a regulatory body. Its internally generated revenue has increased from 2.5 billion Naira in 2011 to 9 billion in 2015 (Orhii, 2016, p5). The agency is currently enmeshed in a long list of controversies and allegations of corruption including contracts scam, air travel racketeering, extortions, dodgy recertification of some companies' operational licences, reception of frivolous donations, large expenditure on fictitious publicity among others (Adewumi, 2016, p11 & 12).

Similar to the unfortunate scenario narrated above is the achievements of the Economic and Financial Crimes Commission (EFCC) between 2003 and 2007 under the leadership of Nuhu Ribadu. The myriads of problems stifling all Nigerian developmental efforts, ranging from misappropriation and theft of public funds, money laundering, bribery, inflated contract prices, fuel subsidy scam and many other fraudulent financial crimes seemed to have found lasting panacea at the emergence of Nuhu Ribadu as the chairman of EFCC. He championed a successful anti-corruption campaign that culminated in the indictment and arrest of thousands of corrupt individuals and government officials, over 270 convictions as well as the recovery of billions of naira from corrupt public office holders (Iweala 2012, p91). Five governors were indicted and two were successfully convicted. The Inspector General of police was also convicted and jailed for fraudulent enrichment (Alli, 2013, p1 & 4). EFCC's achievements attracted both local and international recognitions and commendations. Antonio Maria Costa, the head of the United Nations Office on Drug and Crime (UNODC) unequivocally described the EFCC as "the most effective anti-corruption agency in Africa" while referring to the chairman of the commission as "a crime-buster made of the hardest steel alloy ever manufactured" (UNODC, 2007, p3). It also served as an effective deterrent to would be financial criminals, and was one of the efforts that earned Nigeria her removal from the financial Action Task Force's list of non-cooperative jurisdictions (Akinosi, 2015, p2). However, Nuhu Ribadu was fired by the then Nigerian President, Alhaji Musa Yaradua, for non-declaration of his assets while in office, and that marked the end of the success story of the EFCC. Till date, the commission remained a ghost of its past. Lately, the commission had

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been on the news for all the wrong reasons rather than for crime fighting; mostly on corrupt charges against the leadership and members of the commission (Premium times, 2016, p1-8). Some of the hard-earned high-profile convictions have been upturned through presidential pardon (Edukugho, 2013, p1-3).

The deplorable positions of the two governmental agencies described above illustrate the limits of the achievements of individual icons in the absence of strong and independent institutions. Whereas strong, charismatic and bold individuals are often needed at the centre to act as catalyst for breaking the cynicisms of a jaded public and governmental workforce; only strong institutions can guarantee the sustainability of the successes and the achievements. Conscious efforts must be made not only to separate the "strong man" from the institution, but also to ensure the establishment of robust, durable, self-sustaining and independent institutions that are immune to political meddling, and at the same time not too powerful to the point of abuse of powers (Akinosi, 2015). It is a shame that the same Nigeria that was recognised and commended locally and internationally for her anti-corruption drives in the recent past is today seen globally as a "fantastically corrupt nation". Thus, it is not-yet-uhuru for the disinherited and subjugated Nigerian women. While commending the patriotic accomplishments of our individual heroes and the unrivalled doggedness of the activist-justices for their bold judicial pronouncements, the fact remains that the sustainability of these noble accomplishments depends largely on robust institutional structures. It is quite unfortunate and disheartening that the latest efforts made towards consolidating the legal victories through the introduction of "Gender and Equal Opportunities Bills, 2016" suffered a heavy defeat in the hands of Nigerian parliamentarians (Oshi, 2015).

REFERENCES

Adelanwa, B. (2016) Nigeria; three women of the supreme court. [Online]. *AllAfrica.com*. Available from: allafrica.com/stories/201603220290.hml. [Accessed 04 September 2017]

Adesuwa, T. and Kunle, O. (2014) Leadership Newspaper, Abuja. [Online]. *AllAfrica.* Available from http://allafrica.com/stories/201404180406.html. [Accessed 04 September 2017]

Adewumi, T. A. (2016) Financial, Admin scandals rock NAFDAC. [Online]. Economic confidential. Available from https://economicconfidential.com/2016/01/financial-admin-scandals-roc-nafdac [Accessed on 14 October 2016]

Aigbovo. O and Ewere, A. O. (2015) Adjudicating Women's Customary Law Rights in Nigeria: Has the Tide Finally Turned.? *AJLC*, 5(3), 12-25.

Akinosi, O. (2015) Institutions, Not Heroes: Lessons from Nigeria's EFCC. [Online]. The *Global Anti-Corruption Blog (GAB)*, April 27th, 2015. Available from: https://globalanticorruptionblog.com/.../institutions-not-heroes-lessons-from-nigerias-. [Accessed 05 October 2016]

Alli, Y. (2013) N5.7b fraud: Why ex-IGP Tafa Balogun was arrested, jailed- Ribadu. [Online]. *The Nation Newspaper* of 14th September 2013. Available from: thenationonlineng.net> Featured. [Accessed on 10 October 2016]

Chuks, M. (n.d) Nigeria Law: Understanding the Concept of Judicial Precedence and The Doctrine of Stare Decisis Under the Nigerian Legal System. [Online]. *Nigerian Law*. Available from nigerialaw.blogspot.com/2010/08/understanding-concept-of-judicial_20.ttml. [Accessed 15 October 2016]

Dora, A. (2012) *The War Against Counterfeit Medicine*. Nigeria: My Story. Safari Books.

Edukugho, E. (2013) Alamieyeseigha: Unpardonable pardon. [Online]. *Vanguard Newspaper* of Tuesday, 17th October 2013. Available from:

www.vanguardngr.com/2013/03/alamieyeseigha-unpardonable-pardon/. [Accessed 12 October 2016]

Erhun W. O., Babalola O. O. and Erhun M. O. (2001) Drug Regulation and Control in Nigeria: The Challenge of Counterfeit Drugs. *J. Health Popul. Dev. Ctries*, 4(2), 24-34.

Ghebru, H. and Girmachew, F. (2017) Scrutinizing the status quo: Rural transformation and land tenure security in Nigeria. NSSP Working Paper 43. Washington, D.C. [Online] *International Food Policy Research Institute* (IFPRI). Available from: http://ebrary.ifpri.org/cdm/ref/collection/p15738coll2/id/131363. [Accessed 15 September 2017].

Iweala, N. O. (2012) *Reforming the Unreformable: Lessons from Nigeria*. United States: MIT Press

Omoregie, E. B. (2005) Ending Gender Discrimination in Succession to Traditional Ruler-ship in Nigeria. *Intl. Journal of Gender and Women Studies*, 3(1), 143-151.

Onuoha, A. R. (2008) Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue. [Online]. *The International Journal of Not-for-profit Law*, 10(2), April 2008. Available from :www.icnl.org/research/journal/vol10iss2/art_4.html [Accessed 20 September 2015]

Orhii, P. (2016) NAFDAC is spending internally generated revenue to smoothly run the agency. [Online]. *The Nigerian Pilot*. Available from: http://nigerianpilot.com/nafdac-is-spending-internally-generated-revenue-to-smoothly-run-the-agency-dr-paul-orhii-2/. [Accessed 04 September 2017]

Oshi, T. (2015) *Nigerian Senate Rejects Bill Seeking Gender Equality in Marriage*, Premium Times, 15 March, 2016.

Premium times (2016) *ICPC investigates former EFCC chairman, Farida Waziri*. Premium Times, Tuesday, 18 October 2016

Taire, M. (2012) First female Chief Justice of Nigeria hits the ground running. [Online]. *Vanguard Newspaper*, 10th August 2012. Available from: https://www.vanguardngr.com/2012/08/first-female-chief-justice-of-nigeria-hits-the-ground-running/ [Accessed 12 October 2016].

UNODC (2007) *Head Praises Anti-Corruption "Climate Change" in Nigeria*. [Online]. Available from: https://www.onodc.org/unodc/en/press/release/2007-11-13.html [Accessed on 14 October 2016].

VOA News (2009) *Obama's Speech to Ghana's Parliament*. [Online]. Available from: https://www.voanews.com/a/a-13-2009-07-11-voa6-68819732/364363.html [Accessed 10 September 2017].

WHO (2006) *Nigeria leads fight against "killer" counterfeit drugs*. [Online]. Available from; Volume 84: 2006, Volume 84, Number 9, September 2006, 685-764. [Accessed 13 October 2016]

CASES:

Akinnubi v. Akinnubi (1997) 7 NWLR pt. 512 at 288

Adisa v. Oyinwola (2000) 10 NWLR (pt.674) 116

Amudipe v. Arijodi (1978) 2 LRN 128

Anekwe & ors v. Nweke (2014) 3-4 MJSC 183; (2014) 9 NWLR (pt. 1412) 393

Asanya v. State (1991) 3 NWLR (pt.180) 422

Babajide v. Aisa (1966) 1 All NLR 254

B. P. Co Ltd v. Jammal Engineering Co Nig. Ltd (1974) 1 All NLR (pt.2) 107

Bucknor- Maclean v. Inlaks Ltd (1980) 8/11 SC 1

Dalek Nigeria Ltd v. Oil mineral Producing Areas Development Commission (OMPADEC) (2007) 2 SC at 305

Ebolor v. Osayande (1992) 7 SCN 217

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Egboghenome v. State (1993) 7 NWLR (pt.306) at 383
Ghamson v. Wobill (1947) 12 WACA 181
Mobile Oil Ltd. V. Abolade Coker (1975) 3 S.C 175
Mojekwu v. Ejikeme (2000) 5 NWLR, p. 402
Mojekwu v. Mojekwu (1997, 7 NWLR (pt. 512), p. 288
Mojekwu v. Mojekwu (2004) 4 S.C. Pt. 11)
Nezianya v. Okagbue (1963) 3 NSCC 277
Nwugege v. Adigwe (1934) 11 NLR, p. 134
Nzekwu v. Nzekwu (1988) 1 NSCC 581, (1989) 2
Obumseli v. Uwakwe (2009) All FWLR pt. 486
ODD Ltd v. Joseph Odo & Ors (2010) 8 NWLR pt. 1197, at 486
Oduola v. Coker (1981) 5 S.C 197
Oke v. Nwizi (2013) LPELR-21252, CA
Oladejo v. State (1993) 7 NWLR (pt.306) 383
Oyeniran v. Egbetola (1997) 5 NWLR (504) at 122
Uke v. Iro (2001) 11 NWLR (Pt. 723), p. 196
Ukeje v. Ukeje (2001) 27 WRN, p. 142
Ukeje & ors v. Ukeje (2014) 3-4 MJSC 149, [2014] 234 LRCN 1
Sogunro-Davies v. Sogunro & Ors (1929) 2 N.L.R. p. 79
Suberu v. Sunmonu (1957) 2 FSC. P. 30-35
Tapa v. Kuka (1945) 18 NLR 5
Yusuf v. Dada (1990) 4 NWLR (pt. 146) 657, 669

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SUPERVISING AND RESTRICTING THE CROSS-SHAREHOLDING IN VIETNAM'S BANKING INDUSTRY: COMPARATIVE STUDY OF AUSTRALIAN REGULATORY FRAMEWORK AND THE IMPLICATIONS FOR VIETNAM'S LEGAL REFORM

MR. VIET ANH (VICTOR) TRAN[5]

ABSTRACT

The sophisticated cross-shareholding networks of banks and firms are among critical structural problems of Vietnam's banking system. This paper aims at contributing proposals for the legal reform in banking sector and focuses on structural feature of the banking industry in Vietnam, the cross-shareholding among banks and corporations. A number of issues have been addressed, among other things, the lack of adequate supervision from the market regulator, and inefficient set of rules restricting cross-shareholding as the reasons leading to the development of complicated cross-ownership networks among Vietnam's banks and corporations. Australia has been praised for having successfully overcome the recent GFC; one of the reasons behind this success is said to be the optimal financial regulatory framework. Researching Australia's financial regulations and system can offer novel and helpful ideas for the legal reform in Vietnam's banking industry. This paper will conduct a comparative study of the different mechanisms employed in Australia (and Vietnam) to supervise and restrict the cross-ownership. Accordingly, based on the comparative study of Australian model, we will propose changes and new approaches in regulations and policies relating to the banking restructure and legal reform with a concentration on the supervising and restricting cross-shareholding among banks and corporations.

Key Words: Cross-shareholding; financial regulations; legal reform; banking restructure

INTRODUCTION

Since late 2012, Vietnam has been struggling to avoid a bank run and a financial crisis, and is trying to handle and minimize the consequences of this crisis, especially regarding the issue of non-performing loans, through banking restructure (Nguyen et al., 2014). The Prime Minister confirmed in 2012 that the government has been trying to restructure, fix and strengthen the banking system to eliminate the risk of a collapse of the banking system (Bloomberg, 2012). The State Bank of Vietnam (SBV) in its analysis of the non-performing loans (NPL) crisis recognizes the cross-ownership of the banking system as a structural problem which allows the credit institutions to over-lend to its affiliated companies, bypassing any legal restriction set out by prudential regulations and concealing the actual ratio of NPL (SBV, 2012). This situation originally arose from Vietnam's lax regulation and deregulation policies in the area of banking and finance during the first decade of the 21st century, which had been designed to boost the development of the financial market and provide credit to enterprises (SBV, 2012).

In an SBV report on the "banking restructuring of Vietnam's banking system in the period of 2011-2015", SBV admitted that the issue of cross-ownership amongst credit institutions is very complicated (SBV, 2012). Cross-ownership causes higher systemic risk, especially when a bank in a cross-ownership network collapses, and via various techniques, these banks can sidestep the prudential regulations. Furthermore the investigation and supervision of this cross-ownership practice is very hard because of lack of evidence (SBV, 2012). The above facts demonstrate why financial institutions should not be left to regulate themselves, and without clear regulations, transparency and sufficient supervision, the financial market can fail, leading to severe consequences (Barr, 2012). Crises could be a test

[5] PhD Candidate/Research Assistant, Griffith Law School, Australia

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for the soundness of the financial market and the effectiveness of laws and policies – consequently it is urgent that the regulator makes improvements in supervision, regulation and governance (Scott, 2011).

The Global Financial Crisis (GFC) was a big shock for the American financial market and all other developed economies around the world. However, Australia has managed to be among the least affected countries (Brown and Davis, 2010). Australia is not utterly immune from the financial downturn, in fact, it did experience several impacts on the economy but no serious damage occurred (Brown and Davis, 2010). Researchers have been working to find the reasons behind the Australian banks' resilience through the difficult time of GFC. Three elements are claimed to have kept Australia stable in the midst of the crisis: 'good management', 'adequate regulation' and, somehow, 'luck' (Brown and Davis, 2010). Within such a situation, a good regulatory system is always a safeguard for preventing the adverse consequences of any volatility of a market. This is why the model of the Australian financial legal framework can provide helpful suggestions and ideas to Vietnamese legislators regarding the roadmap for financial regulation reform and banking restructure. Concerning cross-ownership, Australia has not had any problem with cross-shareholding, mainly due to its market-oriented corporate system.[6] Nevertheless, Australia actually has a comprehensive set of rules to restrict the cross-shareholding among companies, and an optimal supervision regime over the financial system.

Vietnam's government is trying to get itself on the path to recovery and has promised regulatory reform, including the restructure of the banking system and a solution for the problems arising as a result of cross-ownership within the banking industry. More than ever before, the policy-makers are in tremendous need of suggestions and proposals for the banking restructure and the handling of cross-shareholding in Vietnam's banking industry. The optimal structure of Australian financial regulatory framework can be a model for the banking restructure in Vietnam. The comparative study thus will analyse the respective regulations regarding cross-shareholding in both jurisdiction. This comparison will specify which Australian rules are optimal and appropriate to address the problems with regards to Vietnam's regulations against cross-shareholding. Vietnam then can consider adopting the similar approach in crafting a better legal regime against cross-shareholding.

WHAT IS CROSS-SHAREHOLDING

Cross-shareholding (or cross-ownership) is a concept mentioned in both the media industry and corporate governance. In telecommunications or the media sector, cross-ownership '*occurs when a person or company owns outlets in more than one medium (newspapers, radio, television) in the same geographical market*' (Edge, 2008). Regulations to supervise and restrict the cross-ownership in the media industry area key part of media ownership rules in the United Kingdom, United States and other countries (Oviedo, 2012). However, within the scope of research and purpose of this thesis, the cross-shareholding (cross-ownership) is studied and analysed under the perspective of 'corporate governance' and in the financial sector.

Cross-shareholding (within the banking industry) has been studied and mentioned in a number of academic sources in various jurisdictions, especially the typical countries with developed cross-shareholding structures in their economies such as Germany, Japan, Korea or Italy (Dietzenbacher and Temurshoev, 2008). In its simplest form, cross-shareholding is the situation in which shares of two companies are mutually held between them (Ogishima and Kobayashi, 2002). However, the cross-shareholding structure in practice can be much more

[6] Author's note: In the countries with market-oriented corporate system, e.g. United States or United Kingdom (common-law countries), cross-ownership does not develop because their capital markets are liquid with the presence of a great number of public companies, fewer inter-corporate shareholdings and well-developed securities exchanges.

complicated with the involvement of a number of corporations in various industries and financial institutions. In Wang's research, the cross-shareholding is described as the circumstance in which the corporations own each others' shares for specific purposes (Wang and Deeley, 2012). These purposes can be to carry out a strategic business plan between multiple corporations and banks; or to deal with the legal requirement for the minimum capital or capital adequacy (To, 2013). In a business relationship involving suppliers and customers, the cross-shareholding is to support the transactional relationship between parties when both parties have the rights (of shareholders) to cross-check the business of each other; and in a credit relationship between banks and corporate clients, the cross-ownership gives the banks better supervision over their clients' solvency (Scher, 2001). In Japan, the corporations and banks also form cross-shareholding networks to protect them from hostile takeovers (Morck, Nakamura and Frank, 2001). In Onetti's research on cross-ownership in Germany, cross-ownership is specified as the event where the industrial or financial institutions hold shares in other corporations on a long-term basis (Onetti and Pisoni, 2009). This share-ownership is a mutual relationship when a corporation holds the shares of other corporations and its own shares are held by such other corporations forming a cross-shareholding system among corporations (and banks). In a cross-shareholding network, the relationship between members can be that of a business relationship between corporations in the same industry, or a relationship between distributors and customers, creditors and borrowers.

The cross-shareholding platform has been popularly developed in many countries in the world, mainly the European continental countries or Asian countries in which the capital market is illiquid because the trade of control and ownership is infrequent, and sophisticated structures of inter-corporate shareholdings have developed (Dietzenbacher and Temurshoev, 2008). Whereas, in the countries with market-oriented corporate systems, e.g. United States or United Kingdom (common-law countries), cross-ownership does not develop to the same extent because their capital markets are liquid with the presence of a great number of public companies, fewer inter-corporate shareholdings and well-developed securities exchanges (Dietzenbacher and Temurshoev, 2008).

CROSS-SHAREHOLDING DEVELOPMENT IN VIETNAM

The cross-ownership issue in Vietnam's system began in the early 1990s, after the dual banking system was established. In the beginning, cross-ownership in the banking system was created mainly to support financially small-scale banks, but since this time, it has developed into a sophisticated network used for different purposes (Truong and Nguyen, 2013).

In 1990, when the Ordinance on Banks, Credit Cooperatives, and Financial Companies was passed, the banking sector in Vietnam had only 4 state-owned commercial banks. After the passing of this ordinance, the strong wave of newly established joint stock commercial banks appeared in the market. In this period, the scale of these banks was very small, so the government had a policy allowing the state-owned banks to invest in private banks by share purchase (Truong and Nguyen, 2013). The presence of the state-owned banks in the shareholding structure of the private banks was for two purposes. First, it helped the government to easily supervise the operation of these private banks. Second, the state-owned banks could share their experience and human resources and improve the capital capacity of the small private banks (Pham and Le, 2013).

After the Asian financial crisis in the period of 1997-1998, the number of banks in Vietnam decreased remarkably (Pham and Le, 2013). Many banks were restructured, wound up or acquired. The government subsequently deregulated aspects of banking and issued easy-access-credit policies in the banking sector to boost this industry (Pham and Le, 2013). The market again witnessed a new wave of bank establishment. Beside the growth in quantity, the banking industry demanded the expansion of capital capacity (Pham and Le, 2013). This

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demand led to the complicated cross-ownership feature of Vietnam's banking system that now exists. Specifically, the state-owned groups and corporations invested vigorously in different sectors of the economy, including in the banking and financial sector (To, 2013). These state-owned corporations established banks with a small amount of capital, and then took advantage of their influence to list the newly established banks on the stock exchange. When the stock price increased, they sold shares to collect the difference while still holding a sufficient amount of shares to maintain the control of such banks (To, 2013).

Certainly, this model of bank establishment has had many negative impacts on the market. The banks set up by the state-owned corporations play the main role in capitalization for such projects. The loans provided for these corporations are guaranteed by low-quality mortgages through easy and shortcut assessment procedures. When the debt is due, and the debtors are unable to repay, the banks need to realize the low-value mortgages. As a consequence, the non-performing loan ratios of the banks keep rising (Pham, 2013).

Around 2007, a great number of regional banks were converted to urban banks and the big banks took this opportunity to invest in the developing banks (Pham, 2013). To become the shareholder of other banks, banks can set up subsidiaries or joint-ventures to purchase the shares of the developing banks, or they can contribute capital via loans, with the security being the target bank's shares (Pham, 2013). For example, Vietbank was established in February 2007 by this method. The major shareholders of this bank have contributed capital via loans from other credit institutions including ACB Bank, notably the security of this loan includes Vietbank's shares. Furthermore, ACB Bank is a major shareholder of Vietbank holding 10% of this bank's total shares (Dinh, 2013). In this period, this form of capitalization to set up a small bank was very popular, creating a number of banks and the credit growth was unimaginably fast (Pham, 2013). Conversely, in this time the small banks and companies also invested back into the big banks to become the major shareholders. A case to illustrate this practice was when Southern Bank (a small-scale bank), Southern Jewellery Company (a jewellery company), and a number of personal members of executive boards and director boards of other banks held a great ratio of shares of Sacombank (one of the biggest banks in Vietnam) (Dinh, 2013).

In summary, the cross-ownership feature in Vietnam initially was formed due to the historical context of Vietnam, and initially there was no legal restriction on the cross-shareholding among banks and firms. Due to the lack of adequate supervision and efficient legal framework, cross-ownership in the economy and banking industry has become more and more sophisticated. The sophisticated cross-shareholding in Vietnam is claimed to be used by the bank-owners as a method to avoid prudential regulation, and to take advantage of loopholes within the financial legal framework (Vu et al., 2013). The below section will provide a comparative study of policy and laws relating to cross-shareholding in Australia and the respective laws in Vietnam, this will also help to explain why Vietnam's government struggles in supervising and restricting the cross-shareholding.

COMPARATIVE STUDY OF AUSTRALIA'S REGULATIONS AGAINST CROSS-SHAREHOLDING AND VIETNAM'S

In the below paragraphs, in addition to the analysis on Australian rules regarding the cross-shareholding in Australia, a comparison with Vietnamese relevant rules is provided. I then comment on the difference in the approach to regulate cross-shareholding in the banking industry between two jurisdictions and suggest the appropriate aspects and approach of Australia that Vietnam may learn and adopt.

Australia's jurisdiction

Although Australia does not have any issue with cross-shareholding, it has a set of rules to restrict cross-shareholding in certain cases. Public companies may cross-own shares of each other accidentally because their shares are available for trading in the securities market. Australia thus provides certain restrictions to cross-ownership situation among companies and their subsidiaries. Specifically, Section 259C of Corporation Act 2001[7] prohibits the issue or transfer of shares of a company to its controlled entity. Also to prohibit the cross-owned situation between a company and its holding company, Section 259B of Corporation Act 2001 stipulates that a company is not permitted to '*take security over shares (or units of shares) in itself or in a company that controls it*'.[8]

According to Section 259D of Corporation Act 2001, in case any of the following situations occur:

- a company obtains control of an entity that holds shares (or units of shares) in the company;
- a company's control over an entity that holds shares (or units of shares) in the company increases;
- a company issues shares (or units of shares) to an entity it controls in the situation covered by paragraph 259C(1)(c);
- shares (or units of shares) in the company are transferred to an entity it controls in the situation covered by paragraph 259C(1)(d);

such controlled entity has 12 months after any of the above cases occurs to either stop holding shares in the company or the company must end the control over the entity. In addition, when the company is still in control of the entity, the voting rights of the shares is not exercisable. After 12 months, if the company does not cease its control over the entity and the entity keeps holding the shares in the company, the company is considered as committing an offence of strict liability under section 6.1 of Australia's Criminal Code. However, if the company in this case applies for the extension before deadline, Australian Securities and Investments Commission (ASIC) may consider extending the time for the relevant company and entity to end such shareholding situation.

Vietnam's jurisdiction

Cross-shareholding among companies has recently restricted in Vietnam. This policy is reflected in Article 189 of the new Law on Enterprise[9] passed in 2014. Accordingly, the subsidiary companies cannot invest in the capital contribution or purchase shares in the holding company. Subsidiaries of a holding company are not permitted to capital-contribute or purchase shares in each other, to prevent a cross-ownership situation.

Law on Credit Institutions[10] also has this policy earlier in the banking sector stipulated in Article 135 (when this law was promulgated in 2010). Pursuant to this Article, a credit institution is prohibited from contributing capital to or obtaining shares in any enterprise or other credit institution which is a shareholder of that credit institution. In contrast, subsidiaries or affiliated companies of a credit institution are not allowed to contribute capital or purchase shares in such a credit institution. Furthermore, a credit institution that is currently a subsidiary

[7] Corporation Act 2001. No. 50, 2001. Commonwealth Parliament of Australia. (hereinafter 'Corporation Act 2001')
[8] Author's note: There are exemption for financial institutions to taking security over its controlling company's shares, this company must have the ordinary business of 'providing credit' or 'the security is taken in the ordinary course of that business and on ordinary commercial terms' (Section 259B of Corporation Act 2001).
[9] Law on Enterprise 2014. No. 68/2014/QH13. National Assembly of Vietnam. (hereinafter 'Law on Enterprise')
[10] Law on Credit Institutions 2010. No. 47/2010/QH12. National Assembly of Vietnam. (herein after 'Law on CI')

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or affiliated company of a controlling company is not permitted to contribute capital or purchase shares in such controlling company.

Again in Article 19 of Circular 36[11], it is reaffirmed that subsidiaries and affiliates of a commercial bank or a finance company cannot acquire shares of each other or of the controlling bank or the controlling finance company. A commercial bank or a finance company thus cannot acquire shares of the controlling company and the controlling company's subsidiaries or affiliates.

Article 129.5 in Law on CI provides that a credit institution is not allowed to purchase share of other credit institutions which are its shareholder. This restriction is too strict and infeasible in practice because the credit institution may accidentally cross-own each other when they are public companies. That is why Australia only prohibits the cross-owned situation among subsidiaries and parent companies, companies and their controlled entities.

Australia has one set of rules to prevent the cross-shareholding among companies and their affiliations, and this rule is applied for all companies doing business in any industry. Vietnam also has a similar regime for any company under Law on Enterprise. This rule is again provided in both Law on CI and Circular 36 (on prudential standards), but the content of the rule is no different from the one in Law on Enterprise. This overlapping of rules is unnecessary and can cause confusion and difficulty for lawyers and enterprises. There should be one uniform rule to restrict cross-ownership of companies applying to any area of the economy. For example, organisations violating Article 189 of Law on Enterprise may face the penalty set out in Article 39 of Decree 50/2016/ND-CP on administrative sanctions in areas of planning and investment, plus if they are credit institutions, they may again face similar penalties as provided in Article 10 of Decree 96/2014/ND-CP on administrative sanctions in monetary and banking areas (Decree 96) for the violation of Article 135 of Law on CI. Because of the overlapping in rules, now Vietnam's credit institutions face double penalties for one violation.

Regarding the sanctions for violation of cross-shareholding restriction, anyone violating the restriction of cross-shareholding will be subject to not only a monetary penalty but also a variety of remedies, pursuant to Article 10 of Decree 96. The monetary penalty applied for the violation of Article 129 and Article 135 of Law on CI are from 250,000,000VND to 300,000,000VND (approximately USD11,000 to USD13,000). The further remedies can be:

- To order the violator to dispose all the shares obtained via such violation; and/or
- To eliminate the right to receive the dividend of shares relating to the violation; and/or

For the violator being an organisation, the authority may suggest or request that organisation to suspend (for 1 to 3 months) or discharge the person (responsible for the decision leading to such violation) from his/her/their executive position. Additionally, such organisation is not allowed to expand the scale of business until it disposes of all the shares obtained via such violation.

Although, the monetary penalty in this new Decree 96 is increased from the penalty in the previous Decree, its amount is still nothing to the credit institutions. With this low monetary penalty, it is understandable why the credit institutions in Vietnam might take the risk of being caught and sanctioned after violating the restriction on cross-shareholding. The economic gains from the violation of these rules for the financial institutions could be millions of USD while the maximum monetary penalty that they face is just about USD13,000.

The remedy applied by the Australian authority is to order a controlled entity to either stop holding shares in the company, or for the company to end the control over the entity for a period of 12 months. Vietnam's remedy is not as flexible as Australia's because it only requests the controlled company who purchases the shares in the holding company to dispose of them,

[11] Circular on prudential regulations of credit institutions 2014. No. 36/2014/TT-NHNN. State Bank of Vietnam. (hereinafter 'Circular 36')

but it does not have the option for the holding company to stop controlling such company. Australian rules would be welcomed by the enterprise community because the companies would have more options for the remedy, and so they could decide which strategy would be best for their business. Moreover, this Decree does not provide a timeframe for the violator to dispose the shares, while the time required for disposal of shares can be lengthy. Although, Article 26 of Circular 36 provides a term for the disposal of shares, this rule is only applicable for credit institutions which do not include public companies in other areas such as securities, insurance or real estate. Again, because Vietnam does not have a general framework for dealing with cross-shareholding for all type of companies like Australia, the overlapping in regulations may cause many difficulties for competent authorities and companies to follow in practice. In the up-coming project on banking restructure for the second period, Vietnam's law maker should consider adopting Australia's approach in the legal restriction of cross-shareholding and especially revise and supplement the current regulations regarding sanctions/remedies (for the violation of cross-shareholding restriction) to address the above-mentioned issues.

AUSTRALIAN'S FINANCIAL SUPERVISORY FRAMEWORK IN COMPARISION WITH VIETNAM'S: IMPLICATIONS FOR STRUCTURAL REFORM

The fundamental legislation in Australia's banking system is the Banking Act 1959[12]. It is the legal basis for the general operation of the system (Tyree, 2005). The preamble of this Act sets out the purposes for the promulgation, which are '*to regulate Banking, to make provision for the Protection of the Currency and of the Public Credit of the Commonwealth…*'. The Banking Act 1959 hence provides the most important regulations for the banking system, the ADIs, and their operation. The salient sets of rules contained in this Act are the restrictions and conditions for the banking business; its mandate of power to Australian Prudential Regulatory Authority (APRA) to be the single prudential regulator of the financial system; protection of depositors; and foreign exchange (Tyree, 2005).

In every banking system, the prudential regulation plays the main role in maintaining a sound and stable system because it sets out the safety standards for the business and operation of ADIs. Most countries often have their central bank to carry out the function of a prudential regulator (Thomson & Abbott, 2000). Understanding the importance of the prudential standards in the financial industry, Australia took a different approach by forming an independent government agency—APRA— specializing in one job: to act as the sole prudential regulator of Australia's economy (Pearson, 2009).

APRA was established pursuant to the Australian Prudential Regulatory Authority Act 1998 (Cth) ('APRA Act') in July 1998 as a result of the Wallis Report (Pearson, 2009). Before APRA, the Australian financial system had three prudential regulators. Specifically, the Reserve Bank of Australia (RBA) was in charge of the banks and the payment system; the Insurance and Superannuation Commission (ISC) oversaw the life and general insurers as well as the superannuation funds, while the Financial Institutions Scheme (FIS) was the prudential regulator of the credit unions (Pearson, 2009). The Wallis Report suggested having one regulator responsible for all financial institutions including deposit taking, insurance, and superannuation; finally the APRA was born (Pearson, 2009).

Australia is among the very first countries to apply the functional approach to financial regulation and supervision (Black, 2006). The new approach changed the traditional model of institutional regulation, in which the regulators were established and organized based on the type of financial institutions (e.g. securities company, bank, insurance companies), to one of functional regulation, in which there is one regulator to supervise and regulate all institutions relating to certain types of financial services and products (Black, 2006). The regulatory framework accordingly is structured under the "twin peaks" model in which the responsibility

[12] Banking Act 1959. No. 6, 1959. Commonwealth Parliament of Australia.

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for the soundness of financial institutions and responsibility for the conduct of their business are separated and assigned to different authorities. Thus, ASIC is in charge of supervising the conduct of business regulation which focuses on the relationships between a firm and its customers while APRA is responsible for the prudential regulation focusing on the compliance of the financial institutions with the legal requirements relating to prudential standards. However, APRA's range of power and duties might overlap with ASIC's and RBA's when they are operating, to avoid possible conflicts and strengthen authorities' cooperation in practice, they have entered into various bilateral Memoranda of Understanding (Tyree, 2005). These memoranda set out a framework for cooperation between different authorities comprising of the key content such as regulatory and policy development, mutual assistance and co-ordination, and information sharing.

Vietnam's supervision model in financial area is that each ministry (under the Government) supervises the financial institutions doing business in the industry that such ministry administers. In banking areas, the SBV is in charge of the supervision over the operation of credit institutions including banks, financial companies, and credit unions. The Ministry of Finance (MOF) supervises both securities and insurance areas, and it has two independent agencies specialised in each industry. Concerning the securities area, the State's Securities Commission (SSC) under the MOF has the power to supervise the securities companies, public companies and securities market. Another agency under the MOF, the Insurance Supervision Authority (ISA) has the responsibility to supervise the operation of insurance companies.[13]

In addition to supervising the operation of credit institutions, SBV have many other responsibilities in the financial system including conducting the State's management of monetary policy, foreign exchanges, anti money-laundering, economic development planning, and so on (Article 4 of Law on the State Bank of Vietnam 2010[14]). The SBV in Vietnam, in other words, have the power similar to both RBA and APRA in Australia. As SBV has to take on a great number of duties and responsibilities, it has various departments under it to be responsible to certain areas of banking and finance. According to Article 29 of Circular 36, Banking Investigation and Supervision Authority (BISA) under SBV has the power to supervise and inspect the credit institutions' compliance of prudential regulations. This BISA also has a wide range of responsibilities and duties, beside the supervision of prudential regulation compliance, which are dealing with report/claims, anti money-laundering, investigation of corruption (in banking areas), investigation of terrorism funding, and other supervision and investigation duties in banking areas.[15]

Commercial banks in Vietnam are engaging in a number of different businesses such as commercial banking, securities, insurance or real estate (through their subsidiaries or affiliations). BISA has the supervision over commercial banks' activities, however, they can only supervise the commercial banking business among these areas. Due to the limitation of resource, scale and also legal restriction that BISA is established under SBV to have the investigation and supervision power in commercial banking industry, it is not able to investigate banks' involvement in securities, insurance or real estate areas (which are governed by other government agencies of MOF).

Furthermore, BISA is not the only government agency under SBV having responsibilities relating to prudential regulations. In various aspects of prudential regulations, BISA needs to

[13] Author's note: SCC and ISA are under Ministry of Finance, which has the equivalent legal status and power to a Ministry's department. In Vietnam, Ministry of Finance and SBV are ministerial government agencies under the Government.
[14] Law on the State Bank of Vietnam 2010. No. 46/2010/QH12. National Assembly of Vietnam.
[15] Decision on duties, powers, and organizational structure of Banking Investigation and Supervision Authority. No. 35/2014/QD-TTg. Prime Minister of Vietnam. Article 2.

co-work and coordinate with other departments of SBV because BISA's capacity and competence do not cover all content of prudential regulations. For example, (under Article 29 of Circular 36) BISA may work with Department of Monetary Policy and Department of Credit for the supervision of solvency ratios, while Department of Finance and Accounting will cooperate with BISA in providing guidance on accounting regime regarding prudential standards for credit institutions. In short, there is no single government agency in Vietnam specialise in prudential regulations like APRA in Australia.

Vietnam's banking system is young and the banking legal framework has just been formed for more than twenty years (Vu, T.T. et al., 2013). The prudential regulations have only been introduced in Vietnam at the beginning of 21st century, thus it is understandable that Vietnam has just a simple and humble regulatory framework for prudential standards, especially in comparison with developed countries. However, after the NPL crisis and the problems of cross-shareholding have been unveiled, Vietnam should have an independent government agency to be fully responsible and specialised in prudential regulations.

It may be difficult for Vietnam to make a major change by establishing a ministerial authority to split the power of SBV, but the Government should consider setting up an authority under SBV to specialise in prudential regulations. This authority will be responsible for all aspects of prudential regulations, e.g. studying and researching the prudential standards, providing guidance on prudential regulations to credit institutions, supervising the compliance of prudential standards, investigating violations relating to prudential regulations, prepare draft bills for prudential regulations. The legal requirement on restriction of cross-shareholding is included in Circular 36 (on prudential regulations) as a prudential requirement, which means this authority will also be responsible to investigate and supervise the cross-shareholding in Vietnam's banking industry. The establishment of this authority will definitely assist the SBV in supervising the compliance of prudential regulations including the cross-shareholding issue more effectively and directly.

In case a new authority under SBV is established to be the specialised prudential regulator, their range of operation in certain cases may overlap other authorities' activities and power. For example, if this authority deals with a public-traded or listed bank, they may need information from SSC which is responsible for supervising securities market and public companies. Vietnam's law-maker may learn from Australia's model by setting up a framework of co-ordination and cooperation between two or more government agencies. Circular 36 only provide general and basic principles of cooperation between BISA and other departments of SBV but there are no other document to provide a specific framework of cooperation between BISA and these authorities or between BISA and authorities in other industry such as SSC. If Vietnam can form these cooperation frameworks among relevant financial regulators, the efficiency and performance of SBV's banking supervision would be significantly improved.

CONCLUSION

In this legal comparative study, we examined the relevant policies and legal framework regarding cross-shareholding in Australia and Vietnam. Australia has overcome the GFC and has a strong set of legal restrictions regarding cross-ownership so that Vietnam can study and learn from Australia's model of financial framework to build a more efficient and transparent legal framework for the banking industry and an adequate set of rules for the current cross-shareholding woes. Based on the comparative review of Australia's financial regulations and policies in dealing with cross-shareholding and Vietnam's, I develop recommendations and suggestions for the legal changes with focus on the restriction and supervision of cross-ownership in the banking system. Hopefully the ideas and suggestions in this research will somehow be reflected in the new plan for the banking restructure which will be presented by the Government next year.

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REFERENCES

Barr, M. S. (2012) The financial crisis and the path of reform. *Yale Journal on Regulation,* 29(1), 91-119.

Black, J. (2006) Managing regulatory risks and defining the parameters of blame: a focus on the Australian Prudential Regulation Authority. *Law & Policy*, 28(1), 1-30.

Bloomberg (2012) *Vietnam to buy bad debt from bank to ease risk of collapse*. 5 March. Available from: http://www.bloomberg.com/news/2012-03-05/vietnam-to-buy-bad-debt-from-banks-to-ease-risk-of-collapse.html. [Accessed 1 Sep 2017]

Brown, C., Davis, K. (2010) *Australia's experience in the global financial crisis*. In: Kolb, R. W. (ed.) *Lessons from the Financial Crisis: Causes, Consequences, and Our Economic Future.* New Jersey: Wiley, 537-544.

Dietzenbacher, E. and Temurshoev, U. (2008) Ownership relations in the presence of cross-shareholding. *Journal of Economics,* 95(3), 189-212.

Dinh, P.L. (2013) Operation of Vietnam's commercial bank system and changes in ownership structure (in Vietnamese). In: *Conference on 'Cross-ownership in Vietnam's commercial banking system'*, Hanoi 2013. Hanoi: Banking Academy, 51-68.

Edge, M. (2008) Cross ownership. In: Donsbach, W. (ed.) *International Encyclopedia of Communication.* Oxford: Wiley-Blackwell. 3, 1079-1083.

Morck, R., Nakamura, M. and Frank, M. (2001) Japanese corporate governance and macroeconomic problems. In: Nakamura M. (ed.) *The Japanese Business and Economic System.* London: Palgrave Macmillan. 325-363.

Nguyen, H.S., Tran, T.T., and Tran, H. Y. (2014) Bank Restructuring-International Perspectives and Vietnam Practices. *Accounting and Finance Research*, 3(2), 36-50.

Ogishima, S. and Kobayashi, T. (2002) Cross-shareholdings and equity valuation in Japan. Japan: The Security Analysts Association of Japan.

Onetti, A. and Pisoni, A. (2009) Ownership and control in Germany: do cross-shareholdings reflect bank control on large companies? *Corporate Ownership and Control,* 6(4), 54-77.

Oviedo, N. (2012) Preserving Cross-Media Ownership Limits: Localism, the NBCO Rule, and Lessons from Canada and the UK. *Conn. J. Int'l L.*, 28(2), 343.

Pearson, G. (2009) *Financial Services Law and Compliance in Australia*. New York: Cambridge University Press.

Pham, M.H. and Le, P.A. (2013) Practice of cross-ownership in Vietnam's commercial bank system (in Vietnamese). In: *Conference on 'Cross-ownership in Vietnam's commercial banking system'*, Hanoi 2013. Hanoi: Banking Academy, 33-49.

Scher, M. J. (2001) Bank-firm Cross-shareholding in Japan: What is it, why does it matter, is it winding down? SESA Discussion Paper No. 15. United Nations: Department of Economic and Social Affairs.

State Bank of Vietnam (2012) *Project on resolutions for credit institutions' non-performing loans* (in Vietnamese). Hanoi: State Bank of Vietnam.

State Bank of Vietnam (2012) *Resolutions for Bank Restructuring in Vietnam* (in Vietnamese). Hanoi: State Bank of Vietnam.

Scott, H. S. (2011) *International finance: transactions, policy, and regulation.* 18th ed., New York: Foundation Press.

Thomson, D. and Abbott, M. (2000) Australian financial prudential supervision: An historical view. *Australian Journal of Public Administration,* 59(2), 75-88.

To, N.H. (2013) Cross-ownership in Vietnam's Banking System, State's administration over cross-ownership in commercial banking system (in Vietnamese). In: *Conference on*

'Cross-ownership in Vietnam's commercial banking system', Hanoi 2013. Hanoi: Banking Academy, 3-26.

Truong, Q.C. and Nguyen, D.T. (2013) Current status of cross-ownership in Vietnam's banking system and several recommendations (in Vietnamese). In: *Conference on 'Cross-ownership in Vietnam's commercial banking system'*, Hanoi 2013. Hanoi: Banking Academy, 26-32.

Tyree, A. L. (2014) *Banking Law in Australia*. 8th ed., Australia: LexisNexis Butterworths.

Vu T.T., et al. (2013) *Cross ownership of financial institutions and corporations in Vietnam - An assessment and recommendations*. Vietnam: Fulbright Economics Teaching Program.

Wang, J. S. and Deeley C. (2012) Research on the "Double-Edged Sword Effect" of Cross-shareholdings in China. [Online]. In: The International Conference on Engineering and Business Management, Shanghai, March 2012. Available from: file.scirp.org/pdf/EBM2012_2013041710425939.pdf [Accessed 1 Sep 2017]

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DEVELOPING AND FOSTERING SUSTAINABLE URBAN TOURISM THROUGH GOVERNANCE NETWORKS: A COMPARATIVE ANALYSIS OF ENGLAND AND THAILAND

THANAPORN TENGRATANAPRASERT[1]

ABSTRACT

A trans-national comparative case study was conducted in Thailand and England to answer two questions. How exactly do governance networks (GNs) influence sustainable urban tourism (SUT) policies and practices? And what lessons can be drawn from the analysis of effective GNs in urban tourism? Data was collected from documentary evidence and through interviews relating to World Heritage Sites (WHS) in Bath and Ayutthaya and the seaside towns of Margate and Pattaya. The study confirmed that GNs offer an effective and suitable means of addressing the challenges of SUT in two widely differing political and cultural contexts. Successful GNs were observed to feature strong leadership, a high degree of democracy and local control, trust, inclusion, and agreement on policy goals and implementation. Empirical evidence also highlighted the tenet that effective GNs are more likely to be formed when dialogue is encouraged, knowledge is freely exchanged, and problems are addressed and solved through partnership.

Keywords: governance networks, sustainable urban tourism, heritage management, seaside town management

INTRODUCTION

Although hierarchical models remain in place in public administration, governance increasingly proceeds through networks involving a negotiated process that allows a plurality of stakeholders to produce joint decisions and mutual solutions on the basis of trust and political obligation, which can subsequently maintain networks by creating self-regulation and norms. The surge in interest in and the establishment of such GNs is prompted by persistent criticism of traditional hierarchical forms of government, which are considered to be excessively rigid and reactive. Partnerships and inter-organisational networks are perceived as the key to more flexible and proactive governance.

Some scholars point out that GNs might strengthen the balance and equity of policy, as a principal goal of sustainable development, through democratic leaning, and the empowerment of stakeholders from different sectors. However, others argue that GNs are likely to create an unequal pattern of participation replicating the patterns of decision-making and asymmetric power found in traditional representative democracy (Dryzek, 2007; Davies, 2011).

Tourism is a key sector of economic activity, distinguished by increasing international cooperation, interdependency and competition. It has been estimated that tourism accounted for 3.1 percent of global economic activity in 2016; this is predicted to rise to 11.4 percent by 2027 (World Travel and Tourism Council, 2017). Awareness of SUT – which is perceived as an approach balancing economic development, social demands and environmental protection – has also developed significantly over the last 30 years to generate a positive impact on tourism (UNEP and WTO, 2005). The literature suggests that GNs are likely to play a major role in determining the socioeconomic success of urban tourism since a pluralistic approach is

[1] Thanaporn Tengratanaprasert is a PhD student in the Department of History, Philosophy and Politics, Manchester Metropolitan University, UK.

required to orchestrate the activity of multiple stakeholders at multiple levels to create effective partnerships and to achieve common goals.

There has been little progress in implementing the GN approach within the Thai public and private sector, but the Thai government considers that GNs offer a useful mechanism for sustaining development in urban tourism. England, on the other hand, has accumulated more than 25 years' experience of using the GN approach in urban tourism and thus provides a useful benchmark for identifying the factors which promote the creation of successful GNs.

There are very few studies of GNs in relation to urban tourism; this research was designed to address this shortfall. The main aims were: (1) to explore how and why GNs in different guises influence SUT policies and practices; and (2) to critically examine the conditions required for effective GNs to be created and to operate effectively, such that SUT is enhanced. The research was conducted in Thailand and England to examine and compare the impact of GNs on SUT in two countries which have very different political systems and cultural contexts.

BACKGROUND: GNS

The traditional, hierarchical model (typical of the 20th century) of government-dominated public administration is no longer considered an effective way of dealing with a range of increasingly complex social and economic issues, such as unemployment and healthcare and pollution control. These issues are seen to be best resolved by GNs which are based on the cooperation and interdependency of various stakeholders.

The structure of GNs varies depending on the national and local context; this flexibility allows them to mirror norms, values, ideas and practices. This leads in turn to different policy choices and outcomes. Rhodes (1997) emphasises horizontal relations in terms of autonomous, self-governing networks, which are increasingly removed from influence and control by the central state. However, Bache (2003) and Davies (2003) argue that the state still retains power over local authorities. Three basic forms of GNs have been identified according to Provan and Kenis (2008).

Participant-governed networks are decentralised and managed by the network members who control decision-making. This type of network is widely seen at grassroots level and aims to strengthen "community capacity".

Lead organisation-governed networks are highly centralised with an asymmetrical power distribution, resulting in one group dominating management and agenda control. This model often occurs in Thailand's local government system.

Network administrative organisations are externally governed by an administrative unit, which plays a central role in communication, coordination and decision-making.

RESEARCH METHODOLOGY

Selection of urban tourism centres for the case studies

The heritage tourism sector lends itself well to the analysis of GNs in relation to SUT, since effective management requires support from numerous stakeholders who are working towards shared goals yet have different and sometimes contradictory agendas. Tension can arise, for example, due to the preservationist ethos of the WHS and attempts by local authorities to extract maximum economic benefit. WHS in Bath and Ayutthaya were selected for study to identify the key variables that help explain GN dynamics, unstable periods of partnership working and enabling factors.

Margate and Pattaya were selected as examples of "seaside towns". The evolution of seaside resorts is essentially a form of urbanisation. As seaside resorts mature, ambience deteriorates, pollution levels climb, negative social impacts increase, and questions of equity arise. In the late 1990s, Margate's local government and funding agencies decided to develop new forms of economic activity to stimulate tourism and revive the town. It was envisaged that

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cultural tourism would drive regeneration through direct benefits and secondary spending in the local economy. While Margate felt the post-1970s decline in UK seaside tourism particularly keenly, Pattaya is becoming increasingly attractive as a tourist destination, resulting in major economic growth, job creation and revenue. However, there is a need to consider SUT in relation to negative social and environmental impacts. For example, the private sector has become a key player in driving resort development but may place more emphasis on profit than socioeconomic benefit.

Trans-national comparative case studies were conducted to examine the relationship between the structure of GNs and their influence on SUT in WHS in Bath and Ayutthaya and in seaside towns in Margate and Pattaya. Each case study provided a unique opportunity to compare and contrast the development and effectiveness of GNs. A longitudinal analysis was conducted for each case study and thematic, cross-case analyses were performed to identify key findings. Extensive data were drawn from multiple sources, including documentary and in-depth interviews. The interviewees associated with each case study were "elites" from public authorities, non-governmental organisations and the private sector. The aim was to ensure that all three pillars around SUT (economic, social and the natural environment) were represented. A total of 37 participants were interviewed – Bath and Margate (18 interviewees), Ayutthaya and Pattaya (19 interviewees).

FINDINGS

The case studies provided empirical support for the following propositions in relation to the effectiveness of GNs in SUT. An overview of the case study analysis is illustrated in Figure 1.

Proposition 1: Institutional design directly affects network initiatives and the roles of actors, such as local tiers of government.

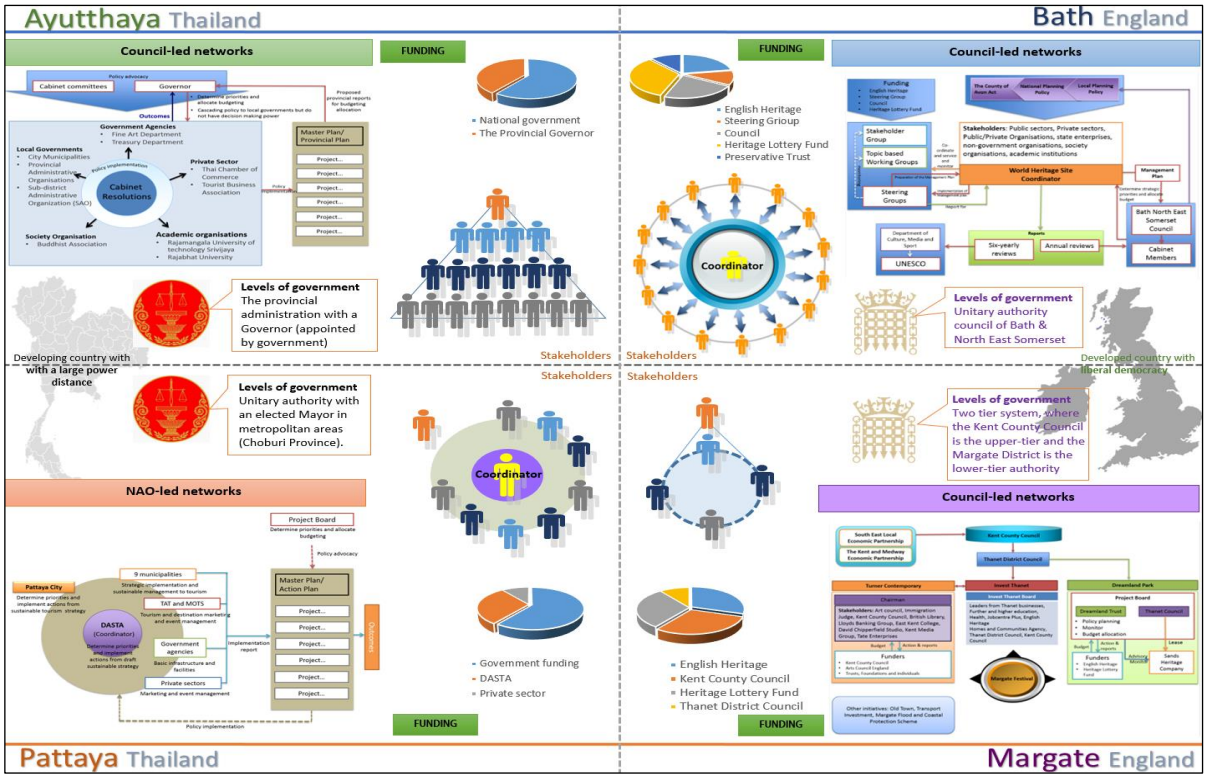
Evidence from the Bath case suggests that a unitary system where there is only one level of local government covering an area promotes holistic management and the creation of highly efficient channels of communication. Stakeholders in the Thai and English cases interact frequently with central government and state regulators, which are crucial links for both regulation and financing. Bath's advantage lies in strong policies/plans for the WHS and successful implementation due to the appointment of a coordinator. Evidence from the Thai cases showed GNs driven at the national level through agencies appointed by central government, typical of a hierarchical structure. The state has historically devolved some functions to the regional level, together with the means to allocate funds. The role of the centre is clear, as power is retained while function is devolved.

Proposition 2: A coordinator needs to be appointed with leadership skills to manage conflict among partners and to influence key policy decisions across and beyond the organisation.

GN leadership in the Bath case works on two levels, through a formal authority which delegates essential powers to a coordinator, who assists in policy development and directs implementation. The coordinator possesses highly developed leadership skills to help mobilise stakeholder support for the management plan.

Unlike in Bath, the coordinator in the Pattaya case – DASTA (Designated Areas for Sustainable Tourism Administration) – appears to have less authority, as the position is neither permanent nor well-resourced and does not cover the entire territorial area. This may lead to network instability and lowered influence to pursue network goals. Thus, sufficient authority is crucial to enable a coordinator to fulfil the expected role.

Figure 1: Overview of case study analysis



Source: the researcher

Proposition 3: The involvement of social groups representing civil society and non-governmental organisations is expected to deliver an essential contribution to the policy-making process.

Empirical evidence from the Bath case confirmed that a wide range of stakeholders is needed to help mobilise specific (local) expertise, improve awareness and support for policy measures, enhance the legitimacy of decisions, and build new networks and coalitions.

Unlike in Bath, there was little evidence of such actions in Ayutthaya. A majority of the interviewees said there were too many stakeholders and partners in the network and they did not represent the full spectrum of tourism industry interests. The private sector, social groups and non-governmental organisations were not involved to a large degree. The overall effect was to weaken the GN and restrict development of SUT.

Proposition 4: The more engaged the stakeholders are throughout the planning process, the greater their chances are of making the right decisions.

The GN operated in Bath included different stakeholders who were engaged throughout the planning process. The coordinator shared ideas and obtained agreement on issues, often in an informal context, and opportunities were provided for local residents to share knowledge and ideas in the initial stage of agenda setting (Portney and Berry, 2010). Thus, it may be concluded that the planning system involves collective decision-making by all stakeholders, which would be more likely to engender support.

In contrast to the Bath WHS case, the strategic plan in Ayutthaya was mainly formulated by central government, without the involvement of local authorities or the public. Locals felt that they received orders and direction from above without being consulted and did not therefore understand the importance of the WHS. This may explain why residents believed that the WHS was likely to create more problems than benefits for the city. Thus, it seems that

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networks fully mandated by government agencies do not elicit the effective cooperation, commitment and contribution of stakeholders to network goals.

Proposition 5: The development of a more formal, deeper interactive relationship over time influences sustainable collaboration.

Like the Bath case, Ayutthaya featured a GN model in which the city council played a major role in establishing and controlling collaborative processes. Evidence from the Margate study illustrated two types of GN. One was similar to Bath, while the second "Dreamland venture" presented a model similar to participant-governed networks in which the members manage external relations with groups such as funding bodies, government and customers. The Pattaya case provides an example of a network administrative organisation where a central government appointed agency, DASTA, plays a broker role in coordinating and sustaining the networks. Such models are generally set up when the network first forms, to stimulate growth through targeted funding and/or network facilitation and to ensure that network goals are met (Eggers and Goldsmith, 2004).

Empirical evidence from all cases confirmed that the setting up of formal networks was likely to be advantageous for maintaining stability. However, the Ayutthaya study demonstrated that tight control by central government compromises the core principles and purpose of GNs and alienates participants. On the other hand, high flexibility and adaptability could be difficult to sustain. Strategies for achieving the stability of GNs are best learned from long established and successful networks, as exemplified by the Bath study. This model featured a high degree of democracy and local control, inclusion, collective responsibility, effective coordination and collaboration of stakeholders, and agreement on policy goals and implementation.

Factors which promote or inhibit GNs

Each type of GN has strengths and weaknesses in relation to enhancing SUT and can profoundly influence how ideas and initiatives are promoted or inhibited. The study identified key foundational and individual factors which affect the performance of GNs engaged in SUT. Tables 1 and 2 summarises the findings and should be read in conjunction with this discussion.

Foundational platform factors

Proposition 6: In weak state structures, a wide range of politicians and bureaucrats can claim some jurisdiction and equal relationship.

This study confirmed the argument of Klijn (2008) that national political and cultural factors distinguish partnerships in different countries. The authoritarian "top-down" nature of modern Thai society has been a feature throughout its history. Inequalities are accepted and a strict chain of command and protocol are observed – those in lower positions show loyalty, respect, and deference to their superiors in return for protection and guidance. This system may lead to paternalistic management, where major issues do not come to the surface, resulting in stalemate outcomes. Attitudes towards people in higher positions are more formal in Thai society and information flow is hierarchical and controlled. British society, on the other hand, believes that inequalities among people should be minimised (Hofstede, 1984). Clearly, a compelling reason for the success of Bath's governance model is that social forces support democracy and equality.

The major challenges to establishing effective GNs in Thailand are a highly hierarchical and deferential culture, and fierce bureaucratic resistance to decentralisation. These traits remain very much part of Thai political and administrative life.

Effective partnerships

All case studies clearly showed that effective partnerships were a requirement for good governance. Although extreme "command-and-control" approaches were not found in the case studies, the threat and enactment of legislation were evidence of explicit assertions of hierarchy. Empirical evidence from the Bath case demonstrated that successful partnership working was characterised by an equal relationship between partners and local government within the unitary authority.

In the English cases, the national level does not dominate decision-making at a local level. Collaboration in the Thai cases was considered asymmetric between central and local governments, reflecting the strong hierarchical social system of Thai culture. The Ayutthaya case showed the strong steering role of the centre as illustrated by the importance ascribed to three agencies in the WHS (the Fine Art Department, Department of Treasury and City Municipality) and the distribution of funds.

Proposition 7: A strong positive culture leads to strong inter-agency collaboration.

Empirical evidence indicated that different cultures are likely to create GNs of different types and dynamics. Bath's GN demonstrates a strong positive and optimistic culture and is organised to represent the broad city interests. The steering group meets formally twice a year and there are also many formal and informal interactions with the coordinator and the chairman. Additionally, Bath has very strong communication within the networks and participants share a strong sense of purpose and strategic direction.

Table 1: Foundational platform factors influencing the effectiveness of GNs operating in SUT

Foundational platform factors	Bath	Ayutthaya	Margate	Pattaya
National political factors	Social forces lead to democracy and equality.	Decentralisation did not help weak and inefficient administrative bodies.	Reform objectives to enhance local democracy.	Inequalities among stakeholders should be minimised.
Effective partnership	High: Equal relationship between partners and local government.	Low: Asymmetric between central and local governments.	Low: Collaboration between the two tiers is needed.	Low: Asymmetric between central and local governments.
Positive and negative cultures	High: Positive attitude and leans towards optimism.	Low: Nobody listened to or supported to partners.	High: Positive attitude.	Low: Key actors do not realise importance of partnership working.
Teamwork and collaboration	High: Partnership working seen as	Low: Thais do not show a positive attitude	High: Within each network. Low: Between networks.	High: Between coordinator and municipalities.

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Foundational platform factors	Bath	Ayutthaya	Margate	Pattaya
	a valued method of operation.	towards teamwork.		Low: Key actors prefer a stand-alone strategy.
Oral communication "story telling"	High: Stakeholders encouraged to speak in whatever manner felt comfortable to them.	Low: Thais avoid criticism and leave problems on the table.	High: Stakeholders were encouraged to express their views.	High: Communication between local municipalities.

Source: the researcher

Table 2: Individual factors influencing the effectiveness of GNs operating in SUT

Individual factors	Bath	Ayutthaya	Margate	Pattaya
Leadership	High: Coordinator has full positional and personal authority.	Low: Council seemed to lack legitimacy to integrate all sectors to achieve shared goals.	Low: Local government plays inactive role.	Low: Coordinator's position is neither permanent nor well-resourced (Pattaya City decided not to take part).
Acceptance of diversity, equity and inclusiveness	High: Bath seeks to engage citizens.	Low: Nobody listens to or supports their partners.	Low: Legitimate coordinator is required.	Low: Key actors are expected to be included.
Clear role and responsibilities of participants	High: Task-oriented and outcome-focused.	Low: Central and local governments overlapping and diffused, resulting in a lack of clarity and direction in WHS management.	High: Task-oriented and outcome-focused. Low: No holistic view.	High: Task-oriented and outcome-focused but limited in broader sense.

Individual factors	Bath	Ayutthaya	Margate	Pattaya
Degree of consensus	High: Stakeholders agree on network-level goals.	Low: Each stakeholder seeks to bring benefits for its organisational preference.	Low: Elites play influential role in decision-making.	Low: Search for consensus between local governments, except Pattaya City.
Trust	High: Interactions are dense and frequent and funding are clear.	Low: Relationships between central and regional governments are tense.	High: Within each network. Low: Between upper-tier and lower-tier.	High: Except Pattaya City.

Source: the researcher

Teamwork and collaboration

Effective communication strategies and mechanisms to coordinate partner activities are needed to facilitate synergistic thinking and action. Network members in the Bath GN realised the importance of cooperative interaction to improve individual performance, enhance legitimacy, attract resources and develop new ideas.

In contrast, interviews in Ayutthaya and Pattaya revealed that Thai people do not show a positive attitude towards teamwork and prefer a stand-alone strategy in collaborative working. This is particularly the case for Pattaya City, which has more power and resources than other municipalities.

Oral communication

The Bath study demonstrated that effective oral communication is important for building effective GNs. Stakeholders were encouraged to speak in whatever manner felt comfortable to them and no conditions were placed on the way they shared or presented information.

Assertive communication rarely occurred in the Thai cases, particularly among group members with lower positions. Most Thai are loyal to the group they belong to, indicating the influence of the country's collectivist culture, and this over-ride most other societal rules and regulations. In order to preserve the "in-group", Thais are not confrontational and "yes" may not mean an acceptance or agreement. Personal relationships are key to conducting business, and it takes time to build these; thus, patience is necessary as well as not openly discussing business at the first meeting. As a result, there are difficulties in reaching agreement.

Individual factors

Proposition 8: Inclusiveness empowers and broadens public participation in network arrangements.

The empirical evidence from the Bath case suggests that it is crucial to involve the right partners. Problems in policy decision-making and implementation can arise due to the resistance of various participants with different perceptions and views. Bath seeks not only to empower and broaden citizens' participation in the GN, but also to deepen participation, for example by ensuring that preferences influence outcomes.

Unlike Bath, the question of equity and inclusiveness arises in the Margate case, where the local community has less influence on policy-making. It is clear that in the Margate network

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more emphasis must be placed on providing a platform for the local community to ensure that the socioeconomic benefits of cultural tourism reach all residents.

Proposition 9: Achieving effective outcomes often depends on clear roles and responsibilities, which encourage actors to activate their resources and knowledge for the problem and/or policy process at stake.

All case studies revealed formal institutional structures which set out clear roles and responsibilities, as stated in their strategic plan. The Bath network was effective because participants generally agreed on network-level goals and wanted to create an attractive city and vibrant economy, as well as attract visitors and maintain their WHS status.

In Ayutthaya, stakeholders' roles and responsibilities were assigned in accordance with cabinet resolution. However, they were overlapping and diffuse, resulting in a lack of clarity and direction in WHS management. The dominance of overlapping governmental stakeholders in Ayutthaya due to the traditional bureaucratic system and the nature of Thai governance meant that the notion of a GN where each stakeholder was equal would be doomed to failure, especially given the territorial nature of responsibility among the stakeholders.

Empirical evidence confirmed the importance of appropriate levels of goal consensus in network governance (Van de Ven, 1976). Interviewees recognised the importance of having a broadly shared vision and consensus among partners for achieving long-term goals. Bath also seemed cognisant of the challenges presented in "staying focused on the shared goal" and was better able to not only articulate these challenges but also, and more importantly, to respond to them. Unlike the other three cases, Bath possessed the discipline to commit to a long-term strategy and let this dictate the partnership's focus and structure, rather than letting short-term goals distract attention and consume scarce funding.

"Influence" is an important parameter that can have a significant effect on network operations. Empirical studies indicated that influence is based on a number of factors, such as control of material resources, information, knowledge, and social and political support. The link between centrality and influence has been well established in the general social network literature (Burkhardft and Brass, 1990). The Bath case illustrated that the lead organisation in the network is more likely to influence the decisions of other stakeholders and maintain a "gatekeeping" role through control of resources. In the Margate case, elite and high-profile participants are perceived to be the most influential bodies in policy networks.

The Ayutthaya case highlighted the power of stakeholders and their original affiliations. Influence on decision-making reflected Thai culture. Thais always say "yes" to influential organisations because they fear the consequences of conflict and exclusion from the group arising from a candid expression of views. In Pattaya, most stakeholders had equal status (sub-district councils) within the administrative network with similar power. Thus, they could freely express opinions, identify issues and solve problems that local authorities would not be able to cope with alone.

Proposition 10: Building trust and relationships can improve problem-solving capacity.

The empirical evidence confirmed that building strong relationships among partners is essential for the creation of effective GNs. The interviews showed that trust was built by sharing and discussing information, and forming long-term, reciprocal relationships. A group thinks in new ways only if members talk to one another and are influenced by what they hear. The Bath case illustrated that trust exists because of frequent interactions and previous trusting relationships. Informal interactions were found to bring positive outcomes, particularly with planning issues

Unlike Bath, decision-making in Ayutthaya was hampered by the unwillingness of actors to share information: they feared opportunistic behaviour from other participants. Distrust was also evident in the Pattaya case because Pattaya City – a key actor – perceived the claiming of credit for collaborative achievements to be a manifestation of power. It is important to note that an element of "distrust" is also necessary. According to the interviews, a certain amount of distrust seems "healthy" in keeping partners sharp in their cooperative relationship. It can increase the checks and balances that create better understanding.

DISCUSSION

It was evident from the English case studies that effective institutional design requires strong, open, and accountable local government working in partnership with all interested parties. The empirical evidence revealed that the unitary authority, in the Bath case, working through a highly skilled coordinator, promoted effective holistic management and created communication channels which facilitated the activities of the complex GN.

The Bath WHS case study clearly demonstrated the ability of GNs to enhance SUT. The local council was the central player in the GN, and the main funding source and the partnership model featured broad representation of key stakeholders including, in some cases, funding bodies from independent organisations and the private sector. Non-governmental organisations from civil society also played an active role in fostering SUT but were steered by council leadership.

The Ayutthaya WHS case study demonstrated poor application of GN principles. Formal hierarchical structures were in place which lacked dynamism, and policy-making was based on self-referential rather than inter-organisational decisions. At the same time, practice showed that existing governmental organisations were incapable of developing effective partnerships. GNs call for an exchange of information between stakeholders and a willingness to seek mutually agreeable solutions. The Ayutthaya case clearly did not function in this way, recognising the need for cooperation but not converting this into practice. The Ayutthaya case also showed the difficulty of interactive decision-making when government stakeholders retain primacy. Consequently, private partners and non-profit organisations were reluctant to contribute knowledge and effort, which created serious obstacles to achieving synergy and problem solving. It is imperative, therefore, that traditional bureaucratic approaches are replaced by effective GN models rather than simply paying "lip service" to the need for change.

The Margate and Pattaya seaside town case studies demonstrated GN initiatives driven by the need for councils to address resource and funding scarcity. In Pattaya, the central government exerts overall control and primary decision-making powers through an appointed facilitator or coordinator (DASTA). The Pattaya system of governance seems to offer a more "inclusive" model of GNs in SUT since it is successfully managing the rapid development of tourism and the associated increases in population and demands on infrastructure.

The major obstacle to implementing GNs in SUT in Margate is the complex structure of the network, which involves a myriad of partners with no overarching coordination body. The role of the district council was essentially subservient to that of the county council and there was little evidence of strong collaboration between the two tiers. Nonetheless, the Margate GN model clearly showed how a unique cultural heritage can translate into urban regeneration and positive economic impact, as exemplified by the success of the Turner Contemporary gallery.

CONCLUSION

Empirical evidence confirmed that effective GNs are more likely to be formed when dialogue is encouraged, strategy is agreed, knowledge is freely exchanged, and problems are addressed and solved through collaboration.

The study identified key factors affecting the formation and effectiveness of different types of GNs and their impact on SUT. The norms of leadership, inclusiveness, transparency,

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responsibility and equity must be followed at the network level. However, GNs continue to be a contested domain between different stakeholders and are subject to competing imperatives.

The challenge for Thailand where stalemate in policy development is the more likely outcome is to build on the existing centrally controlled and directed policy networks to allow more local control. In England, democratic concerns play a decisive role in governance but do not guarantee the development of effective partnerships or policy outcomes. Individual factors, including commitment to collective goals, trust and inclusion, need to be considered and synergised. The current best practices found in Bath's GN, which is closest to the pluralistic model, offer a sound framework for adaptation to the Thai context.

REFERENCES

Bache, I. (2003) Governing through governance: education policy control under new labour. *Political studies*, 51(2), 300–314.

Burkhardt, M. E., and Brass, D. J. (1990) Changing patterns or patterns of change: The effects of a change in technology on social network structure and power. *Administrative science quarterly*, 35(1), 104–127.

Davies, J. S. (2003) Partnerships versus regimes: why regime theory cannot explain urban coalitions in the UK. *Journal of urban affairs*, 25(3), 253–270.

Davies, J. S. (2011) *Challenging governance theory: from networks to hegemony.* Bristol: The Policy Press.

Dryzek, J. S. (ed.) (2007) Networks and democratic ideals: equality, freedom, and communication. In: E. Sørensen and J. Torfing (eds.). *Theories of democratic network governance.* Basingstoke: Palgrave Macmillan, 262–273.

Eggers, W. D. and Goldsmith, S. (2004) *Governing by Network: the new shape of the public sector.* Washington, DC: Brookings Institution.

Hofstede, G. (1984) *Culture's consequences: international differences in work-related values (Vol. 5).* London: Sage.

Klijn, E. H. (2008) Governance and governance networks in Europe: An assessment of ten years of research on the theme. *Public management review*, 10(4), 505–525.

Portney, K. E. and Berry, J. M. (2010) Participation and the pursuit of sustainability in US cities. *Urban affairs review*, 46(1), 119–139.

Provan, K. G. and Kenis, P. (2008) Modes of network governance: structure, management, and effectiveness. *Journal of public administration research*, 18(2), 229–252.

Rhodes, R. A. W. (1997) *Understanding governance: policy networks, governance, reflexivity and accountability*. Philadelphia: Open University Press.

UNEP and WTO (2005) *Making Tourism More Sustainable: A Guide for Policy Makers.* [Online]. France: UNEP. Available from: http://www.unep.fr/shared/publications/pdf/DTIx0592xPA-TourismPolicyEN.pdf [Accessed 2 August 2017]

Van de Ven, A. H. (1976) A framework for organization assessment. *Academy of management review*, 1(1), 64–78.

World Travel and Tourism Council (2017) *Travel and Tourism: Global Economic Impact and Issues 2017*. [Online]. Available from: https://www.wttc.org/-/media/files/reports/economic-impact-research/2017-documents/global-economic-impact-and-issues-2017.pdf [Accessed 5 August 2017]

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PLANETARY RENT AND PLANETARY ETHICS AS THE BASIS OF AN ALTERNATIVE ECONOMIC SCENARIO

ALEKSANDR BEZGODOV[1], KONSTANTIN BAREZHEV[2] AND VADIM GOLUBEV[3]

ABSTRACT

This paper proposes a new economic approach to addressing global economic problems. It implies rebuilding the global economy on the principles of *planetary ethics* derived from Russian Cosmism. It integrates such values as life, social justice, biocompatibility, and technologies of the Sixth Techno-economic Paradigm. These ideas form the core of the *Planetary Project*.

International organizations are not always effective in solving global problems due conflicts of national interests and a lack of funding. The paper introduces *planetary rent* as a new global funding source. It is to be levied on users of *planetary resources* to fund a consolidated *planetary budget*. These resources include atmospheric air, near-Earth space, the Earth's hydrosphere, etc. They belong to the planet. Humanity is the steward of this wealth rather than its owner. It is our moral duty to pay back to the planet a share of the revenue that we receive using the planet's resources.

Key Words: Planetary Project, planetary rent, planetary resources, planetary ethics, Russian Cosmism

INTRODUCTION

This paper proposes a fundamentally new economic approach to addressing global problems that stem from economic and political inequality and depleting natural resources. It implies rebuilding the global economy on the principles of conservation while observing the interests of all participants of the global market as even tiny nations' problems affect the well-being of large countries.

International umbrella organizations including the United Nations are not always effective in solving global problems. This is explained, among other things, by conflicts of national interests within these organizations and a lack of funding. We propose the concept of *planetary rent* to remove these stumbling blocks.

People use the planet's resources to meet their needs. Yet, most of these resources are not owned by anyone: atmospheric air, near-Earth space, fresh water, the waters of the world ocean, geothermal energy, climate and the biosphere. The theory of planetary rent defines these resources as *planetary resources.* They belong to humanity as the steward of the planet.

Max Weber argued that a shift in consciousness was at the base of the historical shift in economics and politics that made possible the emergence of capitalism as a qualitatively new socio-economic formation. "Weber argues that the religious ideas of groups such as the Calvinists played a role in creating the capitalistic spirit. Weber first observes a correlation between being Protestant and being involved in business, and declares his intent to explore religion as a potential cause of the modern economic conditions. He argues that the modern spirit of capitalism sees profit as an end in itself, and pursuing profit as virtuous" (SparkNote, 2017).

A new reassessment of values is needed today to implement an alternative economic strategy that would take us from profit-driven capitalism to a responsible biocompatible

1 Planetary Development Institute, United Arab Emirates. E-mail:-bezgodov@planetaryproject.com
2 Planetary Development Institute, United Arab Emirates. E-mail:- barezhev@planetaryproject.com
3 Planetary Development Institute, United Arab Emirates. E-mail:- golubev@planetaryproject.com

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civilization created by a united humanity. One of the founding fathers of Russian Cosmism, which was arguably the first global philosophy, Academician Vladimir Vernadsky referred to humanity as a great geological, perhaps cosmic, power in the biosphere (Semenova, Gacheva 1993, p 168). The highest goal of planetary economic policy and global anti-crisis management should be recognized as the preservation of the Earth's biosphere for present and future generations.

THEORY

Planetary rent defined

The concept of planetary rent belongs to the sphere of resource factor base management. Planetary rent can be regarded as the highest stage of the evolution of the institution of rent, when its inner contradictions, connected with the alienation of surplus income, would be removed. Rent would serve to fund a planetary budget providing the financial basis for solving global problems rather than to enrich the owner (even if mankind is the owner of planetary resources).

Unlike traditional rent, which creates inequality, planetary rent is based on equality and is designed to generate greater equality. By the equality, which serves as the basis of planetary rent, we mean that all people are in the equal position in the face of the global threat of depletion of resourcesxc. Resources that would never have been associated with any idea of rent, because they cost nothing, e.g., atmospheric air, fresh water, the near-Earth space), declare themselves as an extremely valuable and exhaustible resource, today. This equality of challenge is valid for any type of society, regardless of its class structure, political regime and ideology.

Planetary rent generates equality because it is a fundamentally new type of supranational world income that is collected for the common good rather than in the interests of individuals, corporations or government. It is collected to serve the whole of mankind and is used to solve global economic, social, environmental and political problems. These solutions include creating new zones of economic development (e.g. in Africa), developing effective demographic and migration policies (e.g. in Europe), and encouraging a transition to the Sixth Techno-economic Paradigm.

For a general understanding of the formation of planetary rent, the factor approach is entirely suitable. It implies that any limited resources used in production are considered to be the costs of obtaining some kind of good. Accordingly, economic rent is any payment to a factor of production in excess of the cost needed to bring that factor into production.

Sources of rent

It is possible to distinguish three types of sources of planetary rent: natural resources, noospheric (anthropogenic) resources, and planetary resources.

The first type of planetary rent source includes those natural resources that are actively used as raw materials for the manufacturing, agricultural, infrastructural and service sectors: minerals, soils, fresh water, forest, etc. They are in state, private or public-private ownership.

The second type of resource includes all factors of socio-historical origin, capable of engendering economic rent, including quasi-rent: human, social, intellectual, technological, financial, infrastructure, and other resources.

Finally, the third resource category includes planetary resources. By planetary resources we mean those factors of cosmogonic and terrestrial origin that do not fall under the jurisdiction of individual states and are not the subject of someone's ownership rights. These include near-Earth and outer space, wind energy, the hydrosphere, and atmospheric air.

We propose to start the process of institutionalizing planetary rent with planetary resources rather than with natural or noospheric (anthropogenic) resources precisely because

they are "clean" of any ownership rights and therefore are easier to "planetarize", i.e. make them a common revenue producing good.

The classical theory of rent has one critically important point: the necessary condition for extracting rent from the exploitation of a factor of production is the limited nature of its supply. Although many people believe that there is an infinite amount of atmospheric air, ocean water, wind energy, light and natural heat, this, unfortunately, is no longer the case. At present, we know for certain about the depletion of oil and gas. We know how quickly air and water are poisoned, oxygen is burnt and the ocean is clogged. We are well aware of how many forests are cleared and fertile soil overworked. We see entire species of plants and animals disappearing and entire ecosystems destroyed. This attitude towards natural production factors, which was possible 100 years ago, is no longer permissible today. The need to save and restore the natural environment as a resource base can no longer be ignored.

Although planetary resources are fully involved in the technological cycles they are not yet recognized as production factors and are not included in the list of resources generating rent. This must be done at a supranational legislative level.

When natural resources become the source of planetary rent, the mechanism of its formation must be the extraction of a share in the payment of planetary rent from the national resource income. It includes the natural rent, appropriated by the owner (first of all, the state), other payments in favor of the state (taxes, excises, etc.), and income generated by the resource user (corporations).

Noospheric resources can generate economic rent too. The algorithm for the formation of planetary rent will be similar to the previous one. In the structure of income from economic rent and quasi-rent, a share can also be allocated for the payment of planetary rent. At the outset of planetary rent institutionalization, any contribution to the planetary budget would be voluntary.

Currently, a number of developed countries have funds for future generations, which are based on revenues from resource rent. They invest this accumulated income in the development of the social sphere, human capital, science, new technologies, conservation and the restructuring of their economies to meet stringent environmental requirements. The fact that analogous efforts have not been undertaken systematically on a global scale does not make them impossible. It is an issue of political will.

Types of planetary rent, rent payers and rent appropriation mechanisms

Three types of planetary rent can be identified depending on the type of resource involved. We have planetary rent of the first type if the material source of planetary rent is planetary resources that are not in state and/or private property. This type of rent is absolutely monopolistic. Its financial source is included in the price of finished products and services.

When the material source of planetary rent is the natural resources located in state and/or private ownership, a second type of planetary rent is obtained, which again is absolute and monopolistic. The financial source of planetary rent of the second type is a share in the appropriated natural rent.

We are dealing with the third type of planetary rent when it is derived from anthropogenic, sociogenic and technogenic resources placed in state and/or private ownership. In form, it can be either a monopolistic or differential type of rent. Its financial source is a share in the appropriated economic rent and quasi-rent.

The state and businesses would pay planetary rent of the second and third types while individuals would pay planetary rent of the first and third types. All participants in market relations would have to participate since they all act as resource users, and as such they must proportionally share the responsibilities of compensating for the use of environmental resources and solving the world's problems.

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Determining planetary rent value

The determination of the volume of planetary rent should be based on the essence and origin of the factor income. This approach is most appropriate in the case of natural rent. Indeed, natural rent is a part of income that is not earned by working, but given by nature. Thus, rent is an element of the heritage of society and cannot be included in income. It should be appropriated and used for the needs of society according to the institutionalized rules. Only profit can be taxed (Lvov, 2004).

The added value created by a factor of production is defined as the income minus labor and capital and entrepreneurial costs. Therefore, the theory of land valuation is sometimes called the balance theory. The original balance equality determines the volume of rent:

$$V - C = R + P$$

where:

V - the value of the produced product, calculated at the market price;

C - costs;

R - rent (income of the owner - society);

P - profit of the producer (entrepreneur).

This formula represents a general model of assessing rent. It can be applied to any natural resource or object including land, mineral deposits, forests, or water (Lvov, 2004).

DISCUSSION

Institutionalizing planetary rent

As we already noted, paying planetary rent is the responsibility of all participants of market relations: the state, producers and buyers of goods and services. They should proportionally share the duties to compensate for the use of environmental resources and to address global issues by paying a share of rent income to the planetary budget administered by a modernized United Nations or a new supranational body. It would be absolutely wrong to leave the task of funding the planetary budget solely to businesses or consumers. Modern businesses, particularly in developed countries, have to bear the burden of heavy taxes, fees, and deductions having to contend themselves with relatively low rates of return on investment. If only national states are to pay for planetary rent to the planetary budget, they would have to increase taxes. It would inevitably lead to negative social, economic and political consequences.

The obvious problem is that not all nations or corporations can be trusted in terms of fairness and economic feasibility of rental income distribution. The population of these states fall victim to the manipulation through mass media and economic exploitation by their own self-interested ruling elites. Therefore, there should be three well-planned stages of identifying sources of planetary rent and developing mechanisms of rent creation. We refer to this process as the global institutionalization of rent.

The first stage implies that the economic use of planetary resources that are not under the jurisdiction of individual countries should be defined as a source of planetary rent. The institutionalization of this planetary rent should be in the process of turning resources into panhuman (planetary) resources. This kind of ownership should be fully included in the jurisdiction of the infrastructure of planetary management. During the first stage, planetary rent may be equated to the costs of depreciation of fixed assets.

During the second stage, planetary rent should include all capital-intensive, strategic and non-renewable resources that are still owned by individual states. We have every reason to believe that there will be conditions under which states will minimize their role in global economic relations. The modern state as a political and economic system will be reduced to a small regulatory and representative body with most of its mandate delegated to a planetary governance body.

At the third stage, quasi-rent factors (intellectual, technological, or infrastructural rent) will join the resource base. It will mean that the planetary budget will be based not only on natural but also on social and economic factors creating added value. This way, a vast majority of people will participate in saving the biosphere, protecting world peace, and creating a noospheric planetary civilization. Universal human integration will start as a grassroots movement with people becoming concerned about the fate of the universe, regardless of their background.

Planetary ethics

Having said that, will states want to sacrifice their national, corporations - commercial, and people – private interests? Like any other economic innovation, planetary rent will require significant efforts, first of all, in terms of recognizing its necessity. Reforms, compromises, revision of their interests and ambitions are always connected with the issues of moral choice. Like any other economic innovation, planetary rent will require significant efforts, first of all, in terms of recognizing its necessity. Reforms are always connected with moral choices.

The theory of planetary rent is based on a system of *planetary ethics* that integrates such values as life, integrativity, new models of economic well-being, social justice, resource replacement and conservation. “The Planetary Project philosophy treats collective reason in line with the rational-ethical tradition of the early modern period and modern times, including Emmanuel Kant’s *transcendental subject construct*, Russian Cosmist Vladimir Vernadsky’s *noosphere concept* and Nikita Moiseev’s *concept of global human intelligence* on the *supra-individual basis* of *intelligence and ethics*. The synthesis of these universal notions with biocentric needs gives us an understanding of a single *planetary consciousness”* (Bezgodov, 2015, p 134).

In general, planetary ethics can be defined through the vector "from the ethics of survival to the ethics of life". At the same time, its central moral maxim is that even at the stage of survival all people should understand their higher responsibility. The great European humanist Albert Schweitzer rightly noted, man is ethical only when life as such is sacred to him, whether it be the life of plants, animals or people, and when he readily gives himself up to any life that needs help. Only the universal ethics of experiencing unlimited responsibility for everything that lives can have a basis in thinking. The ethics of a person's relationship to a person cannot be something self-sufficient: it is a concrete relationship, resulting from a general relationship (Schweitzer 1996, p 78).

The main task of planetary ethics is the harmonization of the universal and special, universal and individual, that is, the constitutive (biocentric) level and the normative (cultural) level of values. The basic condition here is the voluntary use of these values as a worldview and behavioral guide, motivator and regulator. The solution of this task will contribute to the formation of an noospheric civilization through a worldwide universal union based on planetary goodwill, collective common sense and spiritual rationality.

Vladimir Vernadsky was the first to use the term noosphere as the third stage in the development of the Earth following the geosphere (inanimate matter) and the biosphere (biological life). Just as the emergence of life fundamentally transformed the geosphere, the emergence of human cognition has fundamentally transformed the biosphere. In this theory, the principles of both life and cognition are essential features of the Earth's evolution. According to Vladimir Vernadsky, “the noosphere we live in is the sphere of human cognition. The noosphere is the last of many stages in the evolution of the biosphere in geological history, the condition of our times. The noosphere for me is neither a mystery nor faith creation, but empirical generalization.” (Vasilenko, 2015, p 227).

Currently, mankind exists only in a quantitative sense, as a population, but not in a qualitative one, as a single organism. Humanity must become the biosocial basis for the

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salvation of its species and habitat for present and future generations. The biosocial basis of the unity of mankind is universal, regardless of people's cultural and ethnic identities. Only by becoming a true humanity can we save our planet. Only on the basis of a single planetary ethics we will be able to implement anti-crisis alternative economic strategies.

CONCLUSIONS AND IMPLICATIONS

Planetary rent theory and planetary ethics are the core of the Planetary Project developed by a team of researchers at the Planetary Development Institute (PDI), which was established in Dubai, UAE, in 2015. The Planetary Project was introduced in the monograph, *Planetary Project: From Sustainable Development to Managed Harmony*, by the leader of the Planetary Project, Prof. Aleksandr Bezgodov. The book came out in English (Bezgodov, 2015), Russian (Bezgodov, 2016) and Chinese.

The mission of the project is to create foundations for a planetary civilization, which would entail creating an integrated humanity and transitioning to a harmonious type of social development based on a biocompatible economy and biocentric ethics. We propose to achieve this goal using a mechanism of social justice that implies redistributing revenues from the use of planetary resources.

In view of the current environmental crisis and an increasingly disproportionate distribution of world income, we believe that making planetary rent payments an alternative supranational funding source is useful for solving global problems and ensuring economic transition to the Sixth Techno-economic Paradigm. It would not be an easy task as it can be carried out only if planetary ownership is introduced for planetary resources. Planetary ownership would legitimize the institution of planetary rent, which would be levied on all users of planetary resources to fund a consolidated planetary budget. The institutionalization of planetary rent as a global economic tool for funding the planetary budget and creating a new economic system should not harm national economies or the global market.

The importance of the institutionalization of planetary rent could be summarized in the following way:

- Unlike classical rent, planetary rent would serve as an instrument for solving global problems rather than a tool for the enrichment of a minority;
- Planetary rent would build a unified order of resource and environmental management;
- Planetary rent would give impetus for the technological and social development of economic entities when the preservation of the environment and social responsibility would be economically attractive;
- Planetary rent would become the first institution of economic relations of the planetary type, which will lead to the formation of planetary humanity.

By paying planetary rent the state would contribute to the strengthening of the system of global security. For legal entities, the justification of the need to pay planetary rent would be the principle of fair compensation for receiving natural and social factor income. For individuals, voluntary participation in the system of planetary activities would be aimed at saving the biosphere for current and future generations.

REFERENCES

Bezgodov, A.V. (2015*) Planetary Project: from sustainable development to managed harmony*. United States: Xlibris.

Bezgodov, A.V. (2016) *Planetary Project: from sustainable development to managed harmony.* St. Petersburg: Piter.

Bezgodov, A.V. (2017) *Planetary rent as an instrument for solving global problems*. United States: Xlibris.

Lvov, D. S. (2004) Nravstvennaya ekonomika (Moral Economics). [Online]. Moscow: Institute of Economic Strategies. Available from: http://www.bibliotekar.ru/biznes-8/42.htm [Accessed 04 July 2017].

Schweitzer, A. (1996) *Life and ideas*. Moscow: Respublika.

Semenova, S.G. and Gacheva, A.G. (1993) *Russian Cosmism: an anthology of modern thought*. Moscow: Pedagogika-Press.

SparkNotes Editors. (n.d.) [Online]. SparkNote on The Protestant Ethic and the Spirit of Capitalism. Available from: http://www.sparknotes.com/philosophy/protestantethic/ [Accessed 7 July 2017].

Vasilenko, V. (2015) Evolution: From Big Bang to Nanorobots. In: The Noospheric Concept of Evolution, Globalization and Big History Bibliography. Eds. Leonid E. Grinin and Andrey V. Korotayev. [Online]. Volgograd: Uchitel. Availale from: https://www.sociostudies.org/almanac/articles/the_noospheric_concept_of_evolution-_globalization_and_big_history/ [Accessed 12 October 2017].

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IN SEARCH OF A BETTER WORLD: UNACCOMPANIED MINORS ON THE MOVE FROM AFGHANISTAN TO THE EUROPEAN UNION

SANSKRITI SANGHI[1] AND SHIVDUTT TRIVEDI[2]

ABSTRACT

We trace the procedural infirmities in the journey of an unaccompanied minor who now seeks refuge in a foreign land in the hope of survival and development, and often to take care of his family. We contextualise this movement of children – from those who have not seen their families since they were seven years old, to those who consider the social worker their only hope for a future – in the flow from Afghanistan to Scandinavian countries while evaluating the level of protection in transit countries and in processes such as interim care, determination and action post determination. We analyse the Joint Way Forward (JWF) agreement aimed at the safe return of Afghani migrants where asylum status has been refused, and provide recommendations aligning with the best interests of the child.

Keywords: unaccompanied minors, refugee, European Union, Afghanistan, best interests

INTRODUCTION

> *We haven't seen our families since we were 7 years old. We peer out every single day, as far ahead as we can look, in the hope that we'll see a familiar figure emerge.*

An *unaccompanied minor* can be defined as a child who has been separated from both his parents and other relatives and is not being cared for by an adult who is responsible for doing so by law or custom (ICRC, 2004). Guardians usually send off their children on such journeys, alone and frightened though they may be, and though the journey may be life-threatening, with the hope that they will have a better chance at a good life than their state of origin, where bombs, bullets and war form part and parcel of their daily existence. Reports suggest that over one third of the total migrant population arriving in the EU comprises children, usually unaccompanied and between the ages of 14 and 16; according to the European Commission, around 3,500 children applied for asylum status in the month of January 2016 alone (Misra, 2016).

The general framework of law for the treatment of unaccompanied minors stems largely from the following instruments: Article 22 of the Convention on the Rights of the Child, General Comment No. 6, Convention on the Status of the Refugees, 1961 Convention on the Reduction of Statelessness in Article 2, UNHRC Guidelines on Determining Refugee Status with special guidelines on the policies and procedures in Dealing with Unaccompanied Children Seeking Asylum as well as Guidelines for the Procedure for Interviewing Unaccompanied Minors (UNHCR, 2001). These focus on protection, humanitarian assistance, non-discrimination, participation, safety and protection, and the human rights of children as interdependent and indivisible.

THE AFGHANI CONTEXT

One in every two unaccompanied minors registered in the EU is an Afghani as of 2015; nationals of this country make up 51% of the total of such minors registered – more than half of these are registered in Sweden (Çelikaksoy and Wadensjö, 2015). The mandate and objective

[1] Student, IV Year (BA LLB (Hons.), Gujarat National Law University, Gandhinagar, India. E-mail:-sanskriti_1996@yahoo.co.in
[2] Student, IV Year (BA LLB (Hons.))Gujarat National Law University, Gandhinagar, India. E-mail:-shivdutttrivedi@gmail.com

of the law in the EU specific to child refugees and children seeking asylum has essential requirements to be met, which are: to recognise the vulnerability of unaccompanied minors to sexual abuse/exploitation and/or human trafficking (European Commission, 2010), to appoint guardians or representatives for the child victim of human trafficking and to ensure special protective provisions such as free legal counselling (European Commission, 2016), representation and child-sensitive conduct of investigations and trial hearings, among others (Directive 2013/33/EU, 2013).

In Afghanistan, the reasons which have traditionally been cited as the triggers for the migration are the following: political and economic instability, crippling poverty, poor education with low prospects for the future, risks of forced labour and kidnapping, and physical insecurities (Hunte, 2009). Not only is the migration from Afghanistan an indication that migrants are escaping the effects of war, but migration can also be seen as the only solution to feeding the economy through remittances. The line between voluntary migrants and refugees is particularly unclear in the case of Afghanistan (Monsutti, 2007).

A study conducted by the UN has indicated that the unaccompanied minors are more often male than female, which stems from their responsibility towards their families, who are seeped in poverty. Their ages are usually between nine and 16, though they often give their ages as being above 16 and say they have low levels of formal education. In most cases, nine out of every 10, it was discovered in conversation with these children that they had no links to their families, lacked knowledge of whether they were alive, or had seen them being shot dead (or knew that they had been killed) (Mougne, 2010).

THE LEVEL OF PROTECTION IN TRANSIT

The most common route adopted by the children from Afghanistan is to Iran, Turkey, Greece, Italy and then France, UK or the Netherlands, and ultimately to the Scandinavian countries (Kanics, Hernandez and Touzenis, 2010). Transit countries provide interim solutions, especially when finances are low, before these children continue onwards to resettle.

For instance, Turkey gives equal treatment to foreign children as to nationals, and the few children who stay on in Turkey, though envisaged as a transit country, are provided with medical facilities and homes where they receive food, shelter, therapy and education. However, usually the country is only regarded as a temporary solution due to the lack of jobs, though there is a lower risk of deportation for those requiring such protection as per the metrics of the UNHCR (European Asylum Support Office, 2015). Greece, it has been observed by UNHRC, "has not established an adequate framework for the identification of unaccompanied and separated children and their referral to appropriate child protection mechanisms, whether at border entry points or inland" (UNHCR, 2009). In addition, the report brought up the practices by Greece of the refoulment of refugees on land and at sea, illegal deportation orders and the inhumane conditions of the detention centres, where minors may be kept as well as other migrants and refugees (Grujicic, 2013).

Support in Italy involves the provision of immediate shelter followed by a needs assessment. The long-term plan is to give migrants education and shelters which are more durable; however, given the lack of funding for such institutions, the sustainability of the system is under question. The biggest gap in Italy is the lack of a mechanism for adequate follow-up from a few centres after the children turn 18 with stops in education midway, lack of employment assistance and the immediate seeking of boarding and lodging fees without providing them with capacity for this (Frontex EU Agency, 2010). The Afghani children who usually settle in France are those who have run out of money and are too tired to attempt to move elsewhere due to the number of failed attempts (Ruf and McClenaghan, 2016). There is region-based disparity, miscommunication due to a lack of interpreters and detainment of children, leading to flaws in this transit country (Human Rights Watch, 2014).

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In the Netherlands, each child is appointed with a guardian and is given a foster family in many cases; the guardians are engaged till the child turns 18 or leaves for the country of origin (Buil and Siegel, 2014). One of the largest problems in the Netherlands is the detention faced by children; the duration of this can be as long as one month, which they are unable to attend school or earn money to provide back home.

Despite a certain level of staggered protection by the transit countries, the networks engaged by parents to smuggle these children from Afghanistan to countries in the EU is run on misinformation to children and intimidation, and these children are often mistreated when they are unable to pay the high fees demanded by the smugglers (Talbot, 2015). Apart from this, children are often separated from their siblings as well and are not allowed by the smugglers to contact their parents due to fear of the national authorities tracing their origin. Other risks include trafficking within these networks as a way to pay for the journey, though they are being exploited to pay a fee often higher than the parents had originally agreed to and paid (Mougne, 2010).

BEST INTEREST PRINCIPLE

The basic guiding principle is the "best interest of the child". "The best interest principle" is enshrined in Article 3 on the Convention on the Rights of Child and under Article 24 of the EU Charter of Fundamental Rights (Frontex EU Agency, 2010). It states that all decisions which concern the child must be done in his or her best interests. It is the responsibility of the state to provide the child with sufficient care when the parents or guardians fail to do so (UNHCR, 1996).

INITIAL ACTION

When the child arrives in the new territory, he/she must be given a legal representative (AIDA, 2015). The central purpose of the initial action is twofold: to determine if the child is accompanied or not; and to determine whether the unaccompanied child is seeking asylum or not (UNHCR, 1997).

Assistance should be taken from health, education and welfare agencies in order to identify the persecution faced by the children at the earliest. Once identified, the next step, examining the application, should be done in an expeditious manner. If there is no reason to believe that he/she is seeking asylum then he/she should be returned home in accordance with the best interests principle (Diop, 2010).

The next step is to register the minors seeking asylum through interviews (UNHCR, 2001). Not only should the report include biographical data but it should include a social history of the child. This report should accompany the child wherever he/she is transferred.

Over and above the social history and bio-data, it is advisable that information such as family information, information on non-family members important to the child, circumstances under which the child is identified, and the child's physical condition, aspirations, mental and emotional development are also duly recorded (UNHCR, 2001).

The initial action as explained above has been finely fleshed out in the guidelines given in UNHCR's community based approach (UNHCR, 2001).

The next step is to assess the child's age. For this, authorities can use physical appearance as a factor to determine the age. Scientific methods to determine age would be given preference over the physical appearance test. It is important to note here that the methods used should not run counter to human dignity. Also, margins of error and the benefit of the doubt should be given to the child (MdM International Network, 2015).

During the process, authorities should have started the process of tracing the parents or families. The assistance of the national Red Cross may be employed here. Also, tracking of the unaccompanied minors should be done in order to ensure that they receive what they need. The

children should have all necessary rights to access asylum procedures (Missing Children Europe, 2014).

INTERIM CARE AND PROTECTION

Every unaccompanied minor is entitled to special care and protection till the final determination of their refugee status is completed. It is important that they are given adequate accommodation for the time being. If there are siblings or guardians, the children should be kept with them (UNHCR, 2001) to assist their adjustment to their new location. Regular supervision should be ensured to prevent ill-treatment.

It is a fundamental rule that unaccompanied minors should not be kept in detention. According to Article 37 of the UNCRC, detention should be used as a last resort. Even if detention is resorted to, it should be ensure that there are no prison-like conditions.

Every unaccompanied minor should have full access to education in the new country. Also, every child has the right to maintain his cultural identity and to further develop his/her mother tongue (UNHCR, 2001). The UNCRC also states that the highest level of health facilities, with no discrimination, be given to children who are seeking asylum.

DETERMINATION OF REFUGEE STATUS

As stated earlier, the applications of unaccompanied minors should be given utmost priority. In most cases, where his/her age permits, an opportunity of a final interview needs to be given to the child before a final decision is made with respect to his/her application. The possibility of an appeal and a review both lies with the applicant and, if exercised, should be dealt with expeditiously (Directorate of Immigration Finland, 2002). The applicant must be represented by an adult (preferably one who is well acquainted with the cultural background of the applicant).

The criteria which need to be assessed for granting asylum status vary from case to case, although there are certain uniform factors which need to be accounted for. These factors include the child's background, his/her family background, etc. (Directorate of Immigration Finland, 2002). Necessary importance should be given to the stage of development of the child and the prevalent conditions in the country of origin. It is to be kept in mind that the human rights as enshrined under the UNCRC are different from the human rights guaranteed to an adult (OHCHR, 2017). Thus, the main criterion which needs to be assessed is whether there exists a fear of persecution. If the fear of the parents cannot be ascertained then the child's fear and understanding of the matter needs to be used as an aid to determine the fear of persecution (UNHCR, 2001).

POST DETERMINATION

If the child is granted asylum or allowed to stay on humanitarian grounds, the child goes for local reintegration keeping in mind the background that such a child comes from. As soon as the child is granted asylum, long-term accommodation along with education and other facilities for the child needs to be determined (Gladwell and Elwyn, 2012).

If the child is not granted asylum, the solution which is in the best interest of the child must be followed. The child's family must be traced in order for them to re-unite the child with the family. Without effective investigation, the child cannot be sent back to the country alone (Hallex, 2015). They should also make sure that he/she will not face any persecution in the future. Before sending the child back, appropriate counselling must be given to the child. Establishment of specific panels should be made who look into these considerations. Specifically, with respect to Afghan minors, Afghanistan and the EU have a JWF.

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JOINT WAY FORWARD (JWF)

Afghanistan and the EU have an agreement which specifically looks at the problem of Afghan refugee applicants who have not been granted asylum status. This is a step towards cooperation between the two in order to ensure the peaceful and effective return of Afghan migrants home. It is important to state here that the JWF in no way creates rights and obligations between the two parties (European External Action Service, 2016). It is to be used as a mere guide. The agreement reaffirms the commitment made by the Afghan Government to accept back migrants who are not granted refugee status. EU member states may make use of scheduled or non-scheduled flights to Kabul for the safe return of the Afghan migrants (The Guardian, 2016). The JWF also states that the parties should accept the help of non-governmental and inter-governmental organisations to provide true and complete information to Afghan migrants in the EU (Oxfam International, 2016). The JWF also makes reference to a package which will help with the reintegration of Afghan nationals back into Afghanistan. The reintegration package not only provides for short-term but also long-term efforts such as complete education, healthcare, stable living and community integration (Worldwide Movement for Human Rights, 2016). Thus, the JWF is an important step towards the reintegration of Afghan nationals back into Afghanistan.

RECOMMENDATIONS

The existing system is far from perfect at each stage. This section therefore looks at possible recommendations which are required in the regime in order to make it more effective.

First, the best interest principle is country-centric, and while it aims at keeping the child's interests on the highest pedestal, in practice the EU authorities have resorted to equating the best interests of the child with the reunion of the family (Mougne, 2010). Further, sometimes, it is over-simplified to such an extent that the very purpose of the best interest principle is defeated because the criteria has been reduced to a linear one and fails to appreciate the holistic nature of the principle (Mougne, 2010). This may not be true in every situation since some unaccompanied minors have left their homes because their interests were not taken care of by their families. Therefore, we need a modification of the guidelines to this principle so that they fit the context of the EU (Human Rights Watch, 2012). There is a need for a minimum standard, sensitisation to authorities with uniform guidelines across jurisdictions and flexible rather than strait-jacket answers.

Secondly, although the JWF seems to be a positive step taken by the EU to help Afghan nationals return home, according to various non-governmental organisations, it is an ulterior motive by which the EU can return any number of Afghan nationals back home (The Guardian, 2016). Thus, an amendment needs to be made so that the EU is not given unfettered powers. Also, an amended version of the JWF will obviously have a positive effect on the migration crisis and so the contracting states should enter into a treaty and give it the force of law.

Thirdly, the reception conditions for unaccompanied minors are extremely poor. While the material conditions may vary from state to state, overall the EU states are not maintaining legal standards. Therefore, there is a need for an enforcement agency which specifically looks at this (House of Lords, UK Parliament, 2016).

Fourthly, the EU more often than not fails to take necessary steps to locate missing unaccompanied minors. Therefore, there is a need for an investigation committee which specifically deals with these problems (House of Lords, UK Parliament, 2016).

Fifthly, there is a need for the UNHCR to undertake extensive research into identifying what exactly are the policy problems in Afghanistan which lead to migration. The research would then help in making policy changes in Afghanistan which would, in turn, reduce the number of migrants (Mougne, 2010).

Lastly, there is a strong need for better and more qualified authorities who participate in the entire refugee status determination procedure. The reason is that the unaccompanied minors are already vulnerable and have migrated with the hope of a better life. However, they are received with the same treatment that they hoped to escape. Therefore, the employment of better authorities is extremely important as this largely affects the mental development of the unaccompanied minors.

REFERENCES

AIDA (2015) Legal Representation of Unaccompanied Children – France [Online]. *Asylum Information Database.* Available from: http://www.asylumineurope.org/reports/country/france/asylum-procedure/guarantees-vulnerable-groups-asylum-seekers/age-assessment [Accessed 12 March 2017].

Buil, C. and Siegel, M. (2014) Destination Europe: Afghan Unaccompanied Minors Crossing Borders. *Children and Borders*, 25–38.

Gladwell, Catherine and Elwyn, Hannah (2012) Broken futures: young Afghan asylum seekers in the UK and on return to their country of origin. [Online]. *New Issues in Refugee Research, Research paper No. 246, The UN Refugee Agency*. Available from: http://www.unhcr.org/5098d2679.pdf [Accessed 2 March 2017].

Çelikaksoy, Aycan and Wadensjö, Eskil (2015) Unaccompanied Minors and Separated Refugee Children in Sweden: An Outlook on Demography, Education and Employment. [Online]. *Institute for the study of labor, disscuion paper no. 8963*. Available from: http://ftp.iza.org/dp8963.pdf [Accessed 10 March 2017].

Directorate of Immigration Finland (2002) *Guidelines for Interviewing (Separated) Minors*. [Online]. Available from: http://www.bettercarenetwork.org/sites/default/files/Guidelines%20for%20Interviewing%20(Separated)%20Minors.pdf [Accessed 22 March 2017].

European Asylum Support Office (2015) *Annual Report on the Situation of Asylum in the EU 2015*. [Online]. Available from: https://www.easo.europa.eu/sites/default/files/public/EN_%20Annual%20Report%202015_1.pdf [Accessed 5 March 2017].

European Commission (2016) *Asylum applicants considered to be unaccompanied minors*. [Online]. Available from: http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/ [Accessed 13 March 2017].

European Commission (2010) *Unaccompanied Minors in the EU*. [Online]. Available from: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/asylum/uam/uam_infographic_a4_en.pdf [Accessed 11 March 2017].

European External Action Service (2016) *Joint Way Forward on migration issues between Afghanistan and the EU*. [Online]. Available from: https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf [Accessed 22 March 2017].

Frontex EU Agency (2010) *Unaccompanied Minors in the Migration Process Frontex EU Agency*. [Online] Available from: http://frontex.europa.eu/assets/Attachments_News/unaccompanied_minors_public_5_dec.pdf [Accessed 27 February, 2017].

Grujicic, K. (2013) A Case Study on Unaccompanied Asylum. [Online]. *School of Natural Science, Bachelor Thesis, Sodertorn University.* Available from: http://sh.diva-portal.org/smash/get/diva2:706260/FULLTEXT01.pdf [Accessed 13 March 2017].

Hallex (2015) Unaccompanied children – The effects of asylum process. [Online]. *Department of Theology, Master's Thesis in Human Rights, Uppsala University*. Available from:

ISBN: 978-1-911185-43-7 (Online)

http://www.diva-portal.org/smash/get/diva2:817825/FULLTEXT01.pdf [Accessed 13 March 2017].

Hunte, P. (2009) Beyond poverty: factors influencing decisions to use child labour in rural and urban Afghanistan. *Afghan Research and Evaluation Unit*.

House of Lords, United Kingdom Parliament (2016) *Children in crisis: unaccompanied migrant children in the EU*. [Online] Available from: https://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/34/34.pdf [Accessed 21 March 2017].

Human Rights Watch (2012) *Caught in a Net*. [Online] Available from: https://www.hrw.org/sites/default/files/HRW_CRD_migrant_brcohure_low.pdf [Accessed 21 March 2017].

Human Rights Watch (2014) *France: Unaccompanied Children Detained at Borders*. [Online] Available from: https://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders [Accessed 25 March 2017].

International Committee of the Red Cross (2004) *Inter-Agency Guiding Principles on Unaccompanied & Separated Children*. [Online]. Available from: https://www.icrc.org/eng/assets/files/other/icrc_002_1011.pdf [Accessed 15 March 2017].

Kanics, J., Hernandez, D. and Touzenis, K. (2010) *Migrating Alone: Unaccompanied and Separated Children's Migration to Europe*. [Online]. UNESCO Publishing. Available from: http://unesdoc.unesco.org/images/0019/001907/190796e.pdf [Accessed 17 March 2017].

MdM International Network (2015) *Age Assessment for Unaccompanied Minors*. [Online] Available from: https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf [Accessed 11 March 2017].

Misra, A. (2016) *The Story of 'Missing Children': Unaccompanied Minors in the Prevailing Refugee Crisis*. [Online]. University of Oxford, Faculty of Law. Available from: https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/story-%E2%80%98missing [Accessed 14 March 2017].

Missing Children Europe (2016) *Where Are They? The Need for Better Tracking of Unaccompanied Migrant Children in the EU*. [Online] Available from: http://missingchildreneurope.eu/news/Post/963/Where-are-they-The-need-for-better-tracking-of-unaccompanied-migrant-children-in-the-EU [Accessed 4 March 2017].

Monsutti, A. (2007) Migration as a rite of passage: young Afghans building masculinity and adulthood in Iran. *Iranian Studies*, 40(2), 167–185.

Mougne, C. (2010) *Trees Only Move in the Wind: A Study of Unaccompanied Afghan Children in Europe*. [Online]. UNHCR, The UN Refugee Agency. Available from: http://www.unhcr.org/4c1229669.pdf [Accessed 5 March 2017].

Oxfam International (2016) *NGOs Call for Scrutiny over EU-Afghanistan Agreement*. [Online] Available from: https://www.oxfam.org/en/research/ngos-call-scrutiny-over-eu-afghanistan-agreement [Accessed 5 March 2017].

Diop, M. (2010) *Unaccompanied Minors' Rights within the EU: Is the EU Asylum and Immigration Legislation in line With the Convention on the Rights of the Child?* [Online]. Odysseus Network, Academic network for legal studies on immigration andasylum in Europe. Available from: http://www.statewatch.org/news/2010/oct/eu-unaccompanied-minors-asylum-and-immigration-legislation-Marie-Diop.pdf. [Accessed 6 March 2017].

Ruf, S. and McClenaghan, M. (2016) EU Asylum Applications from Lone Children. [Online]. *euobserver*. Available from: https://euobserver.com/investigations/132986 [Accessed 11 March 2017].

Talbot, S. (2015) *At the Crossroads for Unaccompanied Migrant Children*. [Online] Available from: http://lirs.org/wp-content/uploads/2015/07/LIRS_RoundtableReport_WEB.pdf [Accessed 12 March 2017].

The Guardian (2016) *EU Signs Deal to Deport Unlimited Numbers of Afghan Asylum Seekers*. [Online] Available from: development/2016/oct/03/eu-european-union-signs-deal-deport-unlimited-numbers-afghan-asylum-seekers-afghanistan [Accessed 19 March 2017].

UNHCR (1996) *Working with Unaccompanied Children: A Community-based Approach*. [Online] Available from: http://www.refworld.org/pdfid/4a54bc24d.pdf [Accessed 9 March 2017].

UNHCR (1997) *UNHCR – Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*. [Online] Available from: UNHCR. http://www.unhcr.org/afr/publications/legal/3d4f91cf4/guidelines-policies-procedures-dealing-unaccompanied-children-seeking-asylum.html [Accessed 7 March 2017].

UNHCR (2001) *The UN Refugee Agency, International Legal Standards: Action for the Rights of Children*. [Online] Available from: http://www.unhcr.org/3e37e5ba7.pdf [Accessed March 12 2017].

UNHCR (2001) *Violence Against Children United Nations Human Rights*. [Online] Available from: http://www.ohchr.org/EN/NewsEvents/Pages/ViolenceAgainstChildren.aspx [Accessed 1 March 2017].

UNHCR (2001) *Convention and Protocol Relating to the Status of Refugees*. [Online] Available from: http://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html [Accessed 10 March 2017].

UNHCR (2009) Observations on Greece as a country of asylum.

Worldwide Movement for Human Rights (2016) *The EU-Afghanistan Joint Way Forward on Migration: a New Low for the EU*. [Online] Available from: https://www.fidh.org/en/issues/migrants-rights/the-eu-afghanistan-joint-way-forward-on-migration-a-new-low-for-the [Accessed 1 April 2017].

STATUTES, GENERAL COMMENTS AND NOTIFICATIONS:

1. Convention on the Reduction of Statelessness, 1961.
2. Convention on the Rights of the Child, 1989.
3. Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, Official Journal C 221, 19/07/1997 0023 – 0027.
4. Directive 2013/33/EU, European Parliament and Council, 26 June 2013.
5. General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, United Nations Committee on the Rights of the Child, CRC/GC/2005/6, 1 September 2005, paragraph 86, 23–24.
6. Global issue of unaccompanied migrant children and adolescents and human rights, OCHCR, A/HRC/33/53.
7. United Nations Convention on the Rights of the Child, Adopted and opened for ratification, signature and accession by GA Resolution 44/25 of 20 November 1989.

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SHARED PARENTAL LEAVE: A LOOPHOLE IN THE LEGISLATION

DR. ERNESTINE NDZI[1]

The legislation on shared parental leave came into effect on the 5th of April 2015, giving mothers the opportunity to go back to work early if they so choose and for fathers to be more involved in the lives of their newborn. The mother is allowed to take the first two weeks of maternity leave and there after she can give up the maternity leave and opt into shared parental leave. The legislation has made the mothers 'gatekeepers' to the effectiveness of the law and its only available to parents who are both employees. Given that mothers have the power to decide whether or not fathers can take shared parental leave mean that fathers do not have a guaranteed statutory right to be part of their newborn's life unless the mother agrees to it. Consequently, the law has failed to resolve dad's request for guaranteed statutory right to be involved in the lives of their newborn. The research done by My Family Care Ltd, Working Families Ltd and CIPD demonstrated that fathers are willing to take shared parental leave but the mothers are reluctant to share the leave. There is a need for the legislation to be revised to include workers and self-employed; and to give the dads a guaranteed right.

6-AZ04-5336

HOW PEOPLE DIFFERENTIATE BETWEEN ISLAMIC AND CONVENTIONAL BANKS? CHOICE FACTORS FOR ISLAMIC BANKS IN PAKISTAN'

MR. SYED AHMAD ABBAS ZAIDI[2]

This study aims to explore and research customer's approach while selecting bank and also to understand the factors customer considers while choosing Islamic Bank. The growth in Islamic Banking sector over last ten years is significant. This research paper uses exploratory research design and data is gathered using random sampling and standardized questionnaire is distributed to respondent. There is a strong notion that people opt for Islamic Bank mainly due to religion.

A unique factor to be considered in the case of Islamic banking is religious motivation, as the establishment of Islamic banking rests on the demand for a sharia compliant financial institution. Nonetheless, findings from previous studies fail to establish a consensus that religion is the deciding factor in bank selection by customers. The findings, however, are mixed with respect to this issue. While Omer (1992); Haron et al. (1994); Metwally (1996); Gerrard and Cunningham (1997);Metawa and Almossawi (1998); Othman and Owen (2001); Ahmad and Haron(2002) and Zainuddin et al. (2004) find that the religious factor is apparently one of the important criteria to be measured for the selection of a bank, other studies report that the religious factor is the least important and has no impact on the bank selection criteria when compared to the quality of services factor (Erol and El-Bdour,1989 and Hegazy,1995).

This study aims to conduct research using qualitative research. Qualitative methods generally aim to understand the experiences and attitudes of participants. Would employ qualitative methods with the aim to answer questions about the 'what', 'how' or 'why' of a phenomenon rather than 'how many' or 'how much', which are answered by quantitative methods.I have used exploratory methodology using (1) questionnaire and (2) interview of selected sample.

[1] Dr. Ernestine Ndzi, Lecturer, University of Hertfordshire.
[2] Mr. Syed Ahmad Abbas Zaidi, C.E.O and Managing Director, Foundation Securities (Pvt) Ltd.

The study shows that people cannot make clear distinction between Islamic and conventional banking principles. There is a knowledge gap and Islamic banking sector should work to bridge this knowledge and conceptual gap. People consider factors like Service Quality, Higher Returns, Religion, and Convenience while selecting a bank. Islamic Banks lag behind the Conventional Banks in product offerings like Insurance and Education Loan. This study shows that though religion is important factor we cannot construe as the single most choice driving factor.

Key words: Islamic Bank, Choice Factors, Banking, Differentiation

8-AU08-5064

AN APPRAISAL AND COMPARATIVE ANALYSIS OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015

DR. MARTINS ISHAYA[3]AND MRS. GRACE DALLONG-OPADOTUN[4]

An essential requirement of justice is that it should be dispensed as quickly as possible. It is a well -known adage that, "justice delayed is justice denied". The fact remains that the provisions of the procedural Codes in the administration of criminal justice in Nigeria are designed to facilitate smooth and speedy trial of cases, are either misused or abused which causes delay in disposing cases indefinitely and ultimate success in the cause often proves illusory. The result is obvious, that cases pile up and huge arrears accumulate in all courts leading to delay. Magistrate courts are the sole adjudicator over criminal matters at the grass-roots. The Judiciary in Nigeria suffers from backlogs, delays and corruption in the administration of justice. In Nigeria speedy resolution of disputes is becoming increasingly elusive because of congestion, excessive adjournments. In Nigeria, the average period to commence and complete litigation is six to ten years. In some instances, the litigation period is even longer. Moreover, the longstanding problems whereby people employ the machinery of criminal justice wrongly for civil matters still persist. It is not uncommon for people to maliciously instigate the arrest and detention of others for a breach of contract, failure to pay debt owed or for other civil wrongs. This article appraises the extent to which the provisions of the Administration of Criminal Justice Act, 2015 achieves the broad purpose of promoting efficient management of criminal justice institutions, speedy dispensation of justice, and the protection of the rights and interests of all actors in the Nigerian criminal justice system particularly the magistracy. It compares the new legislation with other legislations in the Nigerian framework for criminal justice administration, and points out the strengths and weaknesses of this new legislation over the others. Finally, it makes recommendations for a unified and more effective system of criminal justice administration in Nigeria.

Keywords: Criminal Justice, Constitution, Holding charge, Plea Bargain and Sentencing

10-AU29-5123

A COMPARATIVE STUDY ON CRIMINAL PROVISIONS IN INTELECTUAL PROPERTY VIOLATIONS BETWEEN INDONESIA AND UNITED KINGDOM

MR. MUHAMMAD FATAHILLAH AKBAR[5]

In the globalisation, the rising of intellectual property is considerably high. The recent form of technology encourages the environment to establish websites, applications, and other types of

[3] Dr. Martins Ishaya, Lecturer, National Open University of Nigeria.
[4] Mrs. Grace Dallong-Opadotun, Lecturer, National Open University of Nigeria.
[5] Mr. Muhammad Fatahillah Akbar, Lecturer, Universitas Gadjah Mada.

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media. Moreover, the distribution of media, such as music, film, and pictures, is easily done. The media and also the content shall be protected by intellectual property law. Since intellectual property law is in private law field, the violation is commonly settled in civil law dispute. However, at several circumstances, civil law dispute is not sufficient to punish the violation of intellectual property. Hence, criminal law mechanism is provided to cope with that violation. Regarding to this, it relates to the principle of ultimum remidium where criminal law shall be put as the ultimate resort which applies after employing all available mechanism. In Indonesia the principle is implemented by establishing crimes on complain provision in intellectual property crimes. In Indonesia, Article 120 of the Law Number 28 of 2014 on Copyright states that all crimes in this law are crimes on complaint. It refers to copyright crimes. In Indonesia if someone infringes copyright, the victim shall complain it to the police. It depends on the victim whether to settle the case in civil law or criminal law court. Conversely, in UK, according to Article 107 of The Copyright, Designs, and Patent Act 1988, it is an offence if someone infringes copyright and criminal mechanism will be the primary resort. The civil law mechanism still can be conducted, but together with the criminal mechanism. Therefore, there are two different ways in putting criminal law mechanism in intellectual property crimes. This paper aims to examine the ideal concept of criminal mechanism in coping with intellectual property crimes. The question will be answered by normative, historical, and comparative approaches. This study is a normative-legal research using literature review to dissect secondary data. Among the secondary data that this study has dissected are statutory regulations, various legal documents, past studies, and other references which are relevant with criminal law and intellectual property law. Firstly, the paper will examine the differences and similarities between both Countries regarding criminal provisions on Intellectual Property Law. Then, the comparative analysis will be used to collect viable concept in preventing and eradicating intellectual property violations. The focus of all discussion shall be on how to provide criminal mechanism in intellectual property crimes.

11-AU05-5221

MODE AND RULES OF ACQUIRING REAL ESTATE BY FOREIGNERS IN POLAND

MS. AGNIESZKA CZAJKA[6]

The article presents the process of acquiring real estate by foreigners coming from and outside the European Union.

Acquisition by a foreigner of the ownership or perpetual usufruct of a real property and the acquisition or acquisition by a foreigner of shares or shares in commercial companies based in Poland who own or perpetual usufruct of immovable property located in Poland requires the permission of the minister competent for internal affairs.

The issue of real estate acquisition by foreigners is governed by the Act of 24 March 1920 on the acquisition of real estate by foreigners with subsequent changes.

An alien within the meaning of the aforementioned law is: a natural person who does not have Polish citizenship, Legal entity established abroad, A non-corporate entity listed in the above paragraphs, established abroad under the legislation of a foreign country, a legal person and a commercial company without legal personality established on the territory of the Republic of Poland controlled directly or indirectly by the persons or companies mentioned in the foregoing points. In order to obtain a permit, a foreigner should apply for a permit. This article aims to show the process of de-alienation of property by foreigners

[6] Ms. Agnieszka Czajka, Assistant Professor, University of Technology Koszalin.

12-AU11-5134

LEGAL PERSPECTIVE TOWARDS FORGERY, FRAUD AND FALSIFICATION: THE CONTRADICTION EVIDENTIAL STANDARD

DR. HALIL PAINO[7], JAMALIAH SAAD AND KHAIRUL ANUAR

Forgery, Fraud and Falsification of documents are categorized as white color crime offences. To establish successful prosecution and civil claim, the prosecutor and claimant must prove intention and conduct of the accused person that fall under respective statutory provision. However, the applicable of evidential standard are difference particularly in civil action even though this act is an offence under Penal Code. This paper examines the contradictions and proposed a reform to standardizing the evidential aspect.

Under the legal purview the fraudulent act must be collaborated with the act of forgery and falsification of documents to satisfy the ingredient under Penal Code. Therefore, forgery and falsification of documents is a mechanism to commit fraud. Fraud can be defined as includes activities such as theft, corruption, conspiracy, embezzlement, money laundering, bribery and extortion(Mohammed, 2002). Fraud essentially involves using deception to dishonestly make a personal gain for oneself and/or create a loss for another(Yusuf Ibrahim Arowosaiye, 2012). Although definitions vary, most are based around these general themes. Each of the ingredients since fraud carry wide definition, the establishment of fraud exist in the forgery and falsification cases. This is because; fraudulent act must be associated with the act of forgery and falsification. The gap of evidential standard in fraud and forgery cases is widely criticizes. Forgery in the civil claim applies balance of probabilities whereas for criminal prosecution applies beyond reasonable doubt standard of proof (Gottschalk, 2010). This difference approach draws critique because forgery is the act of crime which the standard must same others crime stipulated in the Penal Code (Ng, 2001). This was mentioned in Narayan Chettyar v. Official Assignee, Rangoon AIR 1941 PC when the court held, 'Fraud of this nature, like other charge of criminal offences, whether made in criminal or civil proceedings must be established beyond reasonable reason'.

This paper examines the legal contradiction between fraud, forgery and falsification in term of evidential value and proposed a legal reform in order to close the legal gap between falsification, forgery and fraud.

15-AZ07-5341

FINANCIALIZATION IN INDIA: FACT OR FICTION?

MS. AHANA BOSE[8] AND DR. PURUSOTTAM SEN

The relationship between finance and growth has been a topic of debate among economists for long. Bearing in mind the same discussion Epstein (2005) puts forth the notion of financialization which discusses "the increasing importance of financial markets, financial motives, financial institutions, and financial elites in the operation of the economy and its governing institutions, both at the national and international levels."

While financialization started way back in 1980s in advanced economies its effect became visible after 2008. Keynes in his 'General Theory of Employment, Interest and Money' expressed concern regarding entrusting capital development of a nation is increasingly being

[7] Dr. Halil Paino, Associate Professor, Universiti Teknologi MARA.
[8] Ms. Ahana Bose, Doctorate (PhD) Student, Indian Institute of Management.

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to stock markets instead of following the traditional investment in the real sector. According to Keynes, "Speculators may do no harm as bubbles on a steady stream of enterprise. But the position is serious when enterprise becomes the bubble on a whirlpool of speculation." (Keynes,1936). The notion of financialization as discussed by Epstein is a reflection of the apprehension voiced by Keynes way back in 1936.
Davis (2014) states that not only do large nonfinancial firms indulge in repurchase of shares at an industry level but also choose to lower their investment in directly productive activities. Demir (2007) explores the case of emerging markets and states that 'the rise of rentier capitalism takes place through financialization of firms' income; further he voices concern over its negative consequences for productive investment and growth as well . We will be looking into the impact of financialization in Indian context, in our current study.
The GCDF (as a per cent of GDP) in India in 2016 was 27 per cent compared to 35 per cent in 2008. While non financial firms have been building up their cash piles the real investments have steadily declined. Possibly financialization is at play here; favouring a transfer of income from the "main-street" to "wall-street". The parliamentary committee (JPC) report on stock market scam, 2002 states that "..scam lies not in the rise and fall of prices in the stock market, but in large scale manipulations like the diversion of funds" by corporations. The neglible research on financialization in Indian context motivates us to provide a detailed discussion on the corporate strategies of non-financial firms which are financializing. We will address the issue at the firm level bearing in mind their size, organization structure, and financing channels.
Keywords: Corporate Investment, Firm. JEL Classification: G31, G32

16-AU36-5104

IS LATIN AMERICA AN EXAMPLE OF GROWTH FAILURE: 1801-2015

MRS. MIETHY ZAMAN[9]

With the cases of few growth miracles in the recent past, it is quite common to coin South America as an example of growth failure or disaster. South America is endowed with natural resources and many literature have linked the outcome of this region with the resource curse hypothesis. We employ a two-stage framework to analyse the direct and indirect effect of natural resources on economic growth. Using six major South American countries: Argentina, Brazil, Chile, Colombia, Mexico and Venezuela, empirical analysis found a positive effect of natural resources on income per capita. With a long-term database, findings from our study are expected to provide a thorough representation for the effect of natural resources on economic growth from different channels.

17-AZ08-5351

MONETARY POLICY AND INDUSTRIAL OUTPUT IN THE BRICS COUNTRIES: A MARKOV-SWITCHING MODEL

MR. ADEBAYO AUGUSTINE KUTU[10] AND PROF. HAROLD NGALAWA

This paper examines whether the five BRICS countries share the same business cycles and determine the probability of moving from a contractionary regime to an expansionary regime. The study further examines the extent to which changes in monetary policy affect industrial output in expansions relative to contractions. Employing the Peersman and Smets (2001)

[9] Mrs. Miethy Zaman, PhD Student, Monash University.
[10] Mr. Adebayo Augustine Kutu, PhD Student, University of KwaZulu-Natal.

Markov-Switching Model (MSM) and monthly data from 1994:01 – 2013:12, the study's findings reveal that the five BRICS countries indeed share the same business cycle. The results further demonstrate that the BRICS countries' business cycles are characterized by two distinct growth rate phases: a contractionary regime and an expansionary regime. Strong evidence is found that the area-wide monetary policy has significantly larger effects on industrial output in recessions as well as in booms. It is also established that there is a high probability of moving from state 1 (recession) to state 2 (expansion) and that on average, the probabilities of staying in state 2 (expansion) are high for the five countries. It is therefore recommended from the findings that the BRICS countries should sustain uniform policy consistency (monetary policy), especially as they formulate and implement economic policies to stimulate industrial output.

18-AZ05-5326

P-SVAR ANALYSIS OF STABILITY IN SUB-SAHARAN AFRICA COMMERCIAL BANKS

MR. JOSEPH AKANDE[11] AND DR. FARAI KWENDA

This study analyses the implication of regulation and competition for stability in the Sub-Saharan Africa (SSA) banking sector. We employ a Panel Structural Vector Autoregressive Model (P-SVAR) to investigate regulatory and competition shocks affecting stability in SSA banking sectors, using transformed quarterly data for the period 2006 to 2015 in order to recover some interesting patterns of behaviour in the structural model. A seven-variable P-SVAR with short-term restrictions is constructed from the variables of our analysis. The study provides evidence to show that variations in capital regulation among other regulatory variables employed, have the largest impact on the stability of the commercial banking sectors of SSA. While no short-term relation was found between capital and competition, the results suggest that while stability responds instantaneously to competition, most of the impacts of competition on stability are transmitted via efficiency. The implication is that crafting the right regulatory policies as suggested by our models will ensure optimal banking stability while harnessing the strong advantage that competition has for efficiency, rather than decimating efforts at fine-tuning market structure and/or degree of competition.

19-AZ12-5462

IMPACT OF JOINT AUDIT ON AUDIT QUALITY AND EARNINGS MANAGEMENT: A STUDY OF INDIAN COMPANIES

MS. LEESA MOHANTY[12] AND MR. ASHOK BANERJEE, PROFESSOR (FINANCE & CONTROL)

Better audit quality provides a form of assurance to stakeholders that financial statements of the auditee firms reflect true and fair view of their actual state of affairs. Similarly, earnings quality refers to the extent to which a firm's reported earnings accurately reflect income for that period. This study examines the impact of joint audit on audit quality and earnings quality. It is motivated by the ongoing debate where the Institute of Chartered Accountants of India (ICAI), the regulatory body governing auditors, has advocated to the finance ministry and the Reserve Bank of India (RBI) for the mandatory use of joint audit in private banks to enhance the quality of audit. Earlier, the Government of India had rejected the plea by ICAI for

[11] Mr. Joseph Akande, PhD Student, University of KwaZulu-Natal.
[12] Ms. Leesa Mohanty, Post Doctoral Research Fellow, Indian Institute of Management.

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mandatory joint audits in large companies stating it is not a viable option for promoting domestic firms. We introduce a new measure of audit quality and demonstrate that joint audit improves audit quality. We also, for robustness, use prevalent proxies for audit quality (Big N auditor and ratio of audit fees to total fees) and find negative effect of joint audit on audit quality. We, therefore highlight that different proxies for audit quality show opposite effect of joint audit. Similarly, we also test for the effect of joint audit on earnings quality. Surprisingly, the results suggests that joint audit does not add value to the earnings quality, but it improves the earnings quality when it is considered for financial firms only.

Key words: Joint audit, Audit Phrases, Audit Quality, Discretionary Accruals, Earnings Management, Earnings Quality.

21-AU27-5469

IS GREXIT ON THE CARDS AGAIN? GREECE: JUST WHEN YOU THOUGHT IT WAS SAFE

MS. HELY DESAI[13]

We are now more than half a decade in, since the tragic financial crisis of Greece vented and became a global spectacle of debt. The current economic condition of Greece, though, has a deja vu sentiment about it.

Greece has been witnessing a collapsing economy, trailed by a run on the banks and the IMF ever since the beginning of 2009 which has never in fact ended.

The economy, which has been through even worse downfalls than the prodigious U.S Depression was showing minuscule signs of recovery lately, but has now started to waver again. The perverse aspect of Greece is that its economy is too trifling to holder the amount of debt it is being probed to pay. So now Greece faces all the monetary and fiscal disadvantages but none of the advantages. It owes money to Europe, and hence cannot demand investments from Europe. Ever since it became a part of the one currency club in 2001, there were ramifications that though Greece tried tooth and nail to fit into the meticulous Euro archetype, it would eventually be overthrown back to precarious downs, once it was accepted. There was also conjecture about them numbers being counterfeit, in order to join the club. It was quite certain that Greece now, was entering a chaotic economic plateau with no out. The IMF, in a statement, claims, the debt-stricken country will never be able to achieve its agreed fiscal goal of a primary surplus of 3.5% of GDP in 2018. Now with unemployment, tax evasions and substantially piled-up debts, a stable economy seems impervious, for Greece, let alone far-fetched.

With such a scenario, as a backdrop,'Grexit' could be on the cards as Greece reiteratively endeavours to scrape itself from the pit holes of financial decay by considering the prerequisites of its bailout agreement. Contrary to which, with Germany as an influencing agent, clinging to Greece summoning its spot in the EU, Grexit is debatable.

Taking into account all of these set-ups the paper discusses the consequences and the magnitudes of economic damages in case of a Grexit, analysing the situations, from counter perspectives for Greece and if the Sisyphus-esque crisis will cease to stabilize in the near future.

Keywords: Economic Crisis, IMF, Tax Evasions, Financial Debt, Recession, Currency.

[13] Ms. Hely Desai, Student, Pandit Deendayal Petroleum University.

22-AU23-5438

THE STRUGGLE FOR HUMAN EQUALITY: AN ANALYSIS OF TRANSGENDER.

MS. MANUSHI KAPADIA[14]

When we talk about equality, it is generally understood equality between the sexes- that is between men and women. There is a very close relationship between gender and sex; both distinguish men and women. When sex distinguishes man and woman on the basis of the biological difference between man and woman, gender distinguishes man and woman on the basis of the socio-cultural differences between man and woman. In this respect, our society always gives importance on two genders- that is male and female. But it never focuses on certain groups of people termed as "transgender" who have distinct sexual structure. It is also very difficult to categorize them in either of the line- male or female; masculine or feminine. In this critical juncture, there is no any specificity in their behaviour pattern, dress pattern which is coming under masculine or feminine line. Therefore, they face a different problem in the society which is very typical of nature. Due to this peculiar nature, their status is affected by social stereotype, which is responsible for their unequal treatment in the family, society, workplace etc. Hence, low educational background and thereby problem of employment, the problem of marriage as well as inheritance of property all responsible for their low position in the society. Apart from them, forced sex, arrest on false allegation are few of many problems faced by a transgender in our society which makes it difficult for a transgender to live in a society based on equality before the law. Therefore, the objective of my paper is to analyse the socio-economic problems faced by the transgender.

The paper will also try to analyse is there any specific laws to bring them equal with all the human being. It will also try to find out what types of steps are taken by the government, what types of laws are implemented for their advancement, and are these laws are adequate to solve their problem, or the existing laws are implemented properly to bring them equal with all human being.

Keywords : Transgender, Equality, Inequality, society.

23-AU24-5463

DEVELOPING AND FOSTERING SUSTAINABLE URBAN TOURISM SYSTEMS THROUGH GOVERNANCE NETWORKS: A COMPARATIVE ANALYSIS OF ENGLAND AND THAILAND.

Ms. Thanaporn Tengratanaprasert[15]

Tourism is increasingly becoming a key economic sector, with increasing international cooperation, interdependency and competition. Many of the challenges faced by those in the tourism sector are similar, even if the political frameworks in which they operate are different. Sustainable Urban Tourism (SUT) is a central concept of tourism literature and practice. Commentators and practitioners have argued that SUT requires negotiation and pluralistic approach to strengthen the balance and equity of policy. Literature in public policy suggests that Governance Networks (GNs) are a valuable mechanism in determining its success.

[14] Ms. Manushi Kapadia, Student, Pandit Deendayal Petroleum University.
[15] Ms. Thanaporn Tengratanaprasert, PhD Student, Manchester Metropolitan University.

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This study examines how GNs might be used to gain insights into the dynamic of partnerships and enhance SUT policies. The main aims of this article are: (1) to explore how and why GN in different guises influence SUT policies and practices; and (2) to critically examine the conditions required for effective GN to be created and to operate effectively. It is necessary that comparative research be conducted internationally to identify the patterns and how GN relate to different political cultures and structure. The article addresses this gap and contributes to the literature on policy transference by showing how GNs can be adapted to facilitate global learning.

Exploratory research of World Heritage Sites in Bath, England and Ayutthaya, Thailand and seaside towns tourism in Margate, England and Pattaya, Thailand was conducted to answer the overarching research question: "How exactly do GNs influence SUT policies and practices?" Cross-case analysis was employed to deepen understanding of GN processes by identifying and interpreting cross-case themes. The assessment considered the key actors involved and their relative power in developing SUT strategies in each case. This enabled a review of how local tourism oriented GNs operate, decision-making complexity and the effects of this governance approach on policy planning and implementation. Systematic data collection was carried out using interviews and documentary evidence to gain a comprehensive understanding of GNs development and performance.

It was found that government structure and national culture have a significant impact upon shaping governance partnerships, leading to different modes of GNs. Urban centres even within the same national context can have different policy outcomes. The study shows that GNs offer an effective and suitable means of addressing the challenges of SUT in the context of national culture and policy outcomes. This article shows that the norms of leadership, inclusiveness, transparency, responsibility and equity must also be followed at the network level. A shared action agenda is important for defining individual network members' roles and responsibilities with leadership and coordination being key factors. Given that each country has its own tourism governance model, produced and defined by a unique set of circumstances; a successful model must be cognisant of each country's cultural and political context. The challenge for Thailand is to adapt its current pattern of centrally controlled and directed policy networks to develop GNs with more local influence over policy planning and implementation.

24-AU12-5386

PLANETARY RENT AND PLANETARY ETHICS AS THE BASIS OF AN ALTERNATIVE ECONOMIC SCENARIO

Prof. Aleksandr Bezgodov[16], Dr. Konstantin Barezhev[17], and Dr. Vadim Golubev[18]

This paper proposes a fundamentally new economic approach to addressing global problems that stem from the exhaustion of natural resources. It implies rebuilding the global economy on the principles of conservation and observing the interests of all participants of the global market as even tiny nations' problems affect the well-being of large countries.

International umbrella organizations including the United Nations are not always effective in solving global problems. This is explained, among other things, by conflicts of national interests within these organizations and a lack of funding. We propose the concept of planetary rent to remove the above stumbling blocks to global development.

People use the planet's resources to meet their business and everyday needs. Yet, most of these resources are not owned by anyone. These resources include atmospheric air, near-

[16] Prof. Aleksandr Bezgodov, Professor and General Director, Planetary Development Institute.
[17] Dr. Konstantin Barezhev, Director for Research, Planetary Development Institute.
[18] Dr. Vadim Golubev, Head of Information Monitoring Department, Planetary Development Institute.

Earth space, fresh water, the waters of the world ocean, geothermal energy, climate and the biosphere. The theory of planetary rent defines these resources as planetary resources. They belong to humanity as the steward of Nature. In this capacity humanity acts on behalf of planet Earth.

The authors believe planetary forms of ownership will legitimize the institution of planetary rent, which will be levied on all categories of users for the use of planetary resources to fill a consolidated planetary budget, which could be used to solve global problems and reproduce the natural resource base.

Like any other economic innovation, planetary rent will require significant efforts, first of all, in terms of recognizing its necessity. Reforms are always connected with moral choices. Max Weber argued that a shift in consciousness was at the base of the historical shift in economics and politics that made possible the emergence of capitalism as a qualitatively new socio-economic formation. He associated it with Protestant values that implied a new comprehension of life and posthumous retribution.

The same reassessment of values is needed today to implement an alternative economic strategy. The theory of planetary rent is based on a system of planetary ethics that integrates such values as life, integrativity, new models of economic well-being, social justice, resource replacement and conservation. These ideas form the core of the Planetary Project. Details of all this can be found in Planetary Project: From Sustainable Development to Managed Harmony, by the leader of the Planetary Project, Prof. Aleksandr Bezgodov.

27-AU26-4973

IN SEARCH OF A BETTER WORLD: UNACCOMPANIED MINORS ON THE MOVE FROM AFGHANISTAN TO THE EUROPEAN UNION

Ms. Sanskriti Sanghi[19]; and Mr. Shivdutt Trivedi[20]

From children who haven't seen their families since they were 7 years of age, to those who consider the social worker to be their closest confidante and hope for a brighter future, this research paper traces the journey of an unaccompanied minor, one who is not being cared for by an adult responsible to do so by law or custom and who has been separated from such guardians and now seeks a refuge in a foreign land in the hope of survival and development and often to take care of their families back home. We contextualize this mammoth movement of children in the flow from Afghanistan to Scandinavian countries particularly Sweden while evaluating the level of care in transit countries and we read this with the general framework of law and the obligations on states. We draw out stages in the process such as interim care, determination and action post determination. We seek to further evaluate the joint way forward agreement between Afghanistan and the European Union to return Afghani migrants back safely where asylum status has been refused and we provide recommendations reading primarily with the best interests of the child.

The key policy issues that we seek to address with regards to the massive numbers in movement from their countries of origin, especially in the context of Afghanistan to EU are the growing number of children who are involved in this movement as well as the growing risks in such a process, problems of trafficking, smuggling and sexual abuse of children, the lack of systems in place to address children who haven't submitted claims for asylum, providing for the costs of the newly arriving children and the best interests of the children.

We seek to provide concrete recommendations in order to improve the existing system through reliance on the Convention on the Rights of the Child, improvement of standards in

[19] Ms. Sanskriti Sanghi, Student, Gujarat National Law University.
[20] Mr. Shivdutt Trivedi, Student, Gujarat National Law University.

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the interim care and protection, JWF, role of the UNHRC and compliance with such an international mechanism and the qualification of authorities to simplify the process.

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THE SUB-SAHARAN AFRICA'S HIGHER EDUCATION ENROLMENT: DETERMINANTS AND POLICY IMPLICATION

Mr. Akinola Wilfred[21]; and Dr. Gerry Koye Bokana

This study investigates the factors that determine higher education enrolment (HEE) in some selected countries of Sub-Saharan Africa (SSA) over the period between 1980 and 2015. The hypothesis of this study is that certain factors have significant positive effects on (HEE) in the region. The study adopts panel Auto Regressive Distributive Lag (P-ARDL) as the estimating technique. The result indicates that there is no long and short-run relationship between HEE and Gdp per capita. While the impact of variables such as Secondary school output (Ssg), Population growth rate (Pgt) and Employment rate (Emr) are significantly positive in the long-run on HEE, reverse is the case for Population age group (Pag). Again, Short-Run Causality Tests are conducted with the aim of detecting if pairs of independent variables would jointly affect higher HEE in the SSA countries under investigation: the result is found to be robust and plausible. The ECM value of -0.024202 suggests a possible 2.4% speed of adjustment in the system from the short run deviation to the long run equilibrium. Having passed panel regression diagnostic test, the study, therefore, concludes that improvement in the long-run HEE is obtainable and, therefore, education should be supported with strong education policy implementation, as this could have a positive impact on the transmitting effects of higher education in the SSA economic growth.

30-AU22-5427

IMPACT OF GLOBALIZATION ON THE LABOUR MARKET IN INDIA

Ms. Siddhatti Mehta[22]

Globalization refers to the free movement of goods, capital, services, people, technology and information. The movement of people is highlighted as a prominent feature of the globalisation process. The modern phase of globalisation roots back to at least nineteenth century and in India, the wake of globalisation was first felt in the 1900's after the liberalization plan in India. Since then the global market has opened for the Indians to both trade and movement for employment. People migrating for work abroad have only doubled in order to get higher wages and have a better standard of living. Since globalisation, India hasn't restricted foreign trade, use of new technology, increased FDI, etc. As there have been a number of advantages to the economy and the labour force in terms of free movement, exports and imports, higher wages, etc. There have been a lot of loopholes as well. It has failed to create job security and employment in most part of the country due to the wave of new technology and modernization, Machines have replaced human effort. Multinational firms may have been attracted to invest in the country with more flexible labour markets, creating jobs in the first place but it has also increased inequalities in income distribution. Various labour laws have been formed and implemented to secure jobs and reduce unemployment.

[21] Mr. Akinola Wilfred, PhD Student, University of Kwazulu- Natal.
[22] Ms. Siddhatti Mehta, Student, Pandit Deendayal Petroleum University.

Taking into account all these aspects the paper intends to analyse the effects of globalization on labour market, productivity. The inequalities in income distribution and increased unemployment in backward regions. How labour laws have been implemented to help the labour force of the country and the prospect of labour market in India.
Key Words: Globalisation, Labour market, laws and regimes, impact and effects.

31-AU21-5412

ARCTIC AS A GLOBAL COMMON HERITAGE

Mr. Pavak Patel[23]

The present affairs of the Arctic are governed by few rim nations and the Arctic Council. The matters that are generally discussed by them are related to maintaining peace and stability in the region and the ecology of the Arctic is neglected in pursuit of profits. Increase in global warming and melting of ice is making the region more accessible for economic exploitation. According to US Ice and Snow Data Center, in 2016, approximately 4 million square miles of ice cover which usually freezes in the winter, never froze. Moreover, March 2017 recorded the lowest sea ice in over 100,000 years. At this trajectory, by 2030, we may not have any Arctic ice remaining, which has many detrimental effects environment around the world. This decline in ice cover, is raising the ocean temperature causing unexpected weather events across the globe. Its oil rich reserves combined with the prospects of new shipping lanes has increased the contestation in the region. There is also rise in military presence in the region, creating further instability.

In this article, I would address consequences of the 'Resource Race' by few countries on the ecology. Also, I would enlarge the concept of global commons and how it is the solution to reduce competition in the region. Just because of a geographical accident, it is unjust to leave the fate of the Arctic in just few hands.
Keywords: Arctic, Global Common, Climate Change

32-AU16-5425

ALTERNATE PERFECT STATE MODEL OF INDIA

Mr. Soham Das[24]

India Has Been A Land Of Fusion And Interaction Of Cultures, Religions, Languages And Most Importantly, People. Republic Of India, The Present Political Entity, Got Its Independence In The Year 1947. As India Celebrates Its 70Th Year Of Independence, Let Us Think Of An Alternate Perfect State Model Of India. A Model That Would Do Away With The Major Evils That India Grapples With At The Moment. From Casteism To Corruption, The 123 Crore Indians Have Been Bearing It All For These Seventy Years. The Early Fathers Of This Republic Had Indeed Formed An 'Elephantine' Constitution To Sort Out Issues – But A Glance At Present India Would Tell That It Didn'T Help Much. There Is Economic Disparity – India Has The Ambanis, Birlas & Adanis But Also Millions Of Miserable Souls Below The Poverty Line. But, Interestingly, Its Not That India Lacks In Resources But It Gets Looted Whether By Havoc Tax Evasion Or By Unpaid Industrial Loans. Corruption Is Another Ever-Hungry Giant That Has Ciphoned Out Billions From India Over The Years. India Is The Fastest Growing Economy But There Is Still Huge Tax Burden On The Middle Class And The Impoverished Crave For Basic Resources. India Has A Serious Problem With Allocation Of Resources. The Word 'Socialist' In The Preamble Of The Indian Constitution Has Just Been

[23] Mr. Pavak Patel, PG Student, Pandit Deendayal Petroleum University.
[24] Mr. Soham Das, Student, Presidency University.

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A Show-Piece With Little Benefits Percolating Down To The Down-Troddens Like The Tribals And Dalits. The Successive Governments At Both The Central And State Level Have Announced Populist Welfare Schemes, But The Benefits Have Seldem Been Sustainable Because Of The Intrinsic Rampant Corruption Within The System. The System Of Governance Is Crippled With Red-Tapism And Bureaucratic Stiff-Necked Attitude. There Is Little Actual Accountability On The Part Of The Government. Elections Are Won Largely On The Basis Of Perceptions And Not Facts. It Has Become More Evident In The Present Post-Truth World. The Political, Economic & Social Organisation Of The Country Needs To Be Altered In Order To Build A Better Alternate Model. India Needs To Have A Complete Makeover To Transform Things From Worse To Better. The Faults In The Present System Needs To Be Fixed With Relevant Changes At Appropriate Levels. It Would Surely Be A Head-Start For A Brighter Future Of India.

39-AU01-4982

A HISTORICAL OVERVIEW OF THE GENERAL IMPLEMENTATION OF THE EUROPEAN UNION MARKET ABUSE DIRECTIVE IN THE UNITED KINGDOM BEFORE THE BREXIT AND ITS FUTURE IMPLICATIONS

Prof. Howard Chitimira[25]

The European Union (EU) was probably the first body to establish multinational anti-market abuse laws aimed at enhancing the detection and curbing of cross-border market abuse activities in its member states. Put differently, the EU Insider Dealing Directive was adopted in 1989 and was the first law that harmonised the insider trading ban among the EU member states. Thereafter, the European Union Directive on Insider Dealing and Market Manipulation (EU Market Abuse Directive) was adopted in a bid to improve and effectively discourage all the forms of market abuse in the EU's securities and financial markets. However, the EU Market Abuse Directive had its own gaps and flaws. In light of this, the Market Abuse Regulation and the Criminal Sanctions for Market Abuse Directive were enacted to repeal and replace the EU Market Abuse Directive in 2016. The article examines the adequacy of the EU Market Abuse Directive and its implementation in the United Kingdom (UK) prior to the British exit (Brexit). This is done to investigate the possible implications of the Brexit referendum outcome of 23 June 2016 on the future regulation of market abuse in the UK.

Key words: market abuse, insider trading, market manipulation, European Union, United Kingdom.

[25] Prof. Howard Chitimira, Associate Professor, North West University.

04-AU02-5222

SENSITIVITY OF POLISH SYSTEM OF MUNICIPAL REVENUE FROM REAL ESTATE MARKET TO CHANGES IN ECONOMIC SITUATION

DR. JOANNA CYMERMAN[26] AND DR. INZ. WOJCIECH CYMERMAN[27]

ABSTRACT

The paper discusses the local government revenue from the real estate market, focusing mainly on assessing the sensitivity of the income of municipalities from the real estate marketto changes in an economic situation. The study covered all communes (gminas) in Poland, excluding voivodeship capitals: municipalities, urban-rural communities, rural communities. The temporal scope of the analysis was a decade between 2005 and 2015. The analyses focused on the following three groups of revenue from a real estate market: recurrent property taxes, revenue from municipal assets andtaxes in respect of ownership right transfer. The main research hypothesis was made that the system of revenue from the real estate market in urban communities was more sensitive to changes in an economic situation than in urban-rural and rural communities.The analyzes were conducted for the country in general and in regional sections. The data came from the Local Data Bank of the Polish Central Statistical Office. The data analysis was conducted by means of statistical and econometric methods.

Key words: gmina, real estate market, public revenue, economic downturn.

5-AU03-5222

SPATIAL DIVERSIFICATION OF DEVELOPMENT OF THE AGRICULTURAL PROPERTY MARKET IN POLAND

DR. JOANNA CYMERMAN[28] AND DR. INŻ. WOJCIECH CYMERMAN[29]

ABSTRACT

The paper discusses the development of the agricultural property market in Poland, focusing mainly on identifying the geographical differences in the development of agricultural property markets in voivodships. The study included 16 objects (voivodship agricultural property markets). The temporal scope of the analysis was a decade between 2005 and 2015. The analyses examined closely the number of transactions, their value, areas sold, and the average price of 1 hectare sold by the governmental Agricultural Property Agency and privately traded. The main research hypothesis was made that agricultural property markets in better developed voivodships grow faster than in the less developed ones. The data came from the Local Data Bank of the Polish Central Statistical Office and the Institute of Agricultural and Food Economics – National Research Institute. The data analysis was conducted by means of statistical and econometric methods.

Key words: real estate market, agricultural land, price of land, spatial analysis.

[26]Associate Professor, University of Technology in Koszalin, Faculty of Civil Engineering, Environmental and Geodetics Sciences, Poland. E-mail: - asiacymerman@tlen.pl.
[27]Associate Professor, University of Live Sciences in Lublin, Faculty of Production Engineering, Poland. E-mail: - wojtekc@uwm.edu.pl.
[28]Dr. Joanna Cymerman, Associate Professor, University of Technology in Koszalin, Faculty of Civil Engineering, Environmental and Geodetics Sciences, Poland. E-mail:- asiacymerman@tlen.pl.
[29]Dr.inz. Wojciech Cymerman, Associate Professor, University of Live Sciences in Lublin, Faculty of Production Engineering, Poland. E-mail:- wojtekc@uwm.edu.pl.

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[32] Mrs. Hend Aljardan, Student, University of Southampton.
[33] Mr. Zulkarnain Abd Wahab, Head of Section, Suruhanjaya Syarikat Malaysia.
[34] Mr. Azli Aizam Nawawi, Executive, Suruhanjaya Syarikat Malaysia.

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